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PROVINCE OF ONTARIO
ROYAL COMMISSION
ON
THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

VOL. NO.

1

DATE

16 August 1966

Official Reporters

NETHERCUT & YOUNG LIMITED
48 York Street
TORONTO 1, ONTARIO
TELEPHONE 363-3111



Nethercut & Young

Toronto, Ontario

IN THE MATTER OF The Public Inquiries
Act, R.S.O., 1960, Ch. 323

- and -

IN THE MATTER OF an Inquiry Into and
Report Upon The Workmen's Compensation
Act

BEFORE: The Honourable Mr. Justice W. A.
McGillivray, Commissioner, at
Room 200, 67 Richmond Street
West, Toronto, Ontario, on Tuesday,
16th August, 1966.

APPEARANCES:

W. Z. Estey, Q.C.)
and)
H. D. Guthrie)

Counsel to the Commission

C. R. Osler, Q.C.

For International Nickel
Co. of Canada, Ltd.

F. A. Burgess, Q.C.

For the Bell Telephone
Company of Canada Ltd.

M. E. Fram

Corporation Counsel, City
of Toronto

W. R. Kerr,
Director of Claims and Rehabilitation Services,
Workmen's Compensation Board - Advisor

G. A. Johnston

Secretary

ALSO PRESENT:

T. J. Sommerville

Automotive Transport
Association of Ontario

E. A. Perry

Ontario Mining Association

R. P. Riggin and)
T. G. O'Connor)

Board of Trade of
Metropolitan Toronto

D. C. Sutherland

Ontario Chiropractic
Association



- | | | |
|----|--|---|
| 1 | D. S. Keen | Manager, Ontario Division,
Canadian Manufacturers'
Association |
| 2 | | |
| 3 | T. C. Cox | Ontario Federation of
Construction Associations |
| 4 | | |
| 5 | L. Ingle, Secretary-Treasurer-United Steelworkers of
America | |
| 6 | D. M. Storey, Legislative Director)
G. Markle, Education and Welfare Director)
M. Dunbar) | |
| 7 | | Ontario Municipal Association |
| 8 | | |
| 9 | A. J. McKichan | General Manager, Retail
Council of Canada |
| 10 | | |
| 11 | G. Ireland | Vice-President, Provincial
Federation of Ontario
Professional Fire Fighters |
| 12 | | |
| 13 | L. A. Tufts | Christian Science Church |
| 14 | H. Weisbach and)
J. H. Craigs) | Ontario Federation of
Labour |
| 15 | | |
| 16 | Dr. G. Sawyer | Ontario Medical Association |
| 17 | | |
| 18 | M. MacLaggan | Ontario Forest Industries
Association |
| 19 | | |
| 20 | W. G. Chase | Toronto Transit Commission |
| 21 | | |
| 22 | L. L. Band | Canadian National Railways,
Canadian Pacific Railway
Company and others |
| 23 | | |
| 24 | J. B. Linklater | Ontario Chamber of Commerce |
| 25 | | |
| 26 | R. E. Scott | Ontario Pulp and Paper
Makers Safety Association |
| 27 | | |
| 28 | E. H. Reeves | Forest Products Accident
Prevention Association |
| 29 | | |
| 30 | W. Kennedy | International Union of Mine,
Mill and Smelter Workers |
| 31 | | |
| 32 | G. N. Yourt | Rio Algom Mines, Limited |
| 33 | | |
| 34 | N. Ferguson | United Electrical, Radio
and Machine Workers of
America. |
| 35 | | |



1 ---On commencing at ten o'clock a.m.

2
3 THE COMMISSIONER: Mr. Johnston, will you
4 read the Order-in-Council?

5 THE SECRETARY: "Province of Ontario

6 "ELIZABETH THE SECOND, by the Grace of,
7 God of the United
8 Kingdom, Canada and
9 Her other Realms and
10 Territories, Queen, Head
11 of the Commonwealth,
12 Defender of the Faith.

13 "TO THE HONOURABLE GEORGE A. MCGILLIVRAY OF
14 Our Village of Forest
15 Hill, in Our Province of
16 Ontario, a Justice of
17 Appeal of Our Supreme
18 Court of Ontario and
19 One of Our Counsel learned
20 in the Law.

21 GREETING:

22 "WHEREAS in and by Chapter 323 of the
23 Revised Statutes of Ontario, 1960, entitled
24 'The Public Inquiries Act', it is enacted
25 that whenever Our Lieutenant Governor in
26 Council deems it expedient to cause inquiry
27 to be made concerning any matter connected
28 with or affecting the good government of
29 Ontario or the conduct of any part of the
30 public business thereof or of the administration



1 of justice therein and such inquiry is not
2 regulated by any special law, he may, by
3 Commission appoint one or more persons to
4 conduct such inquiry and may confer the
5 power of summoning any person and requiring
6 him to give evidence on oath and to produce
7 such documents and things as the commissioner
8 or commissioners deems requisite for the full
9 investigation of the matters into which he
10 or they are appointed to examine;

11 "AND WHEREAS Our Lieutenant Governor in
12 Council of Our Province of Ontario deems it
13 expedient to cause inquiry to be made
14 concerning the matters hereinafter mentioned:

15 "NOW KNOW Ye that We, having and reposing
16 full trust and confidence in you the said George
17 A. McGillivray DO HEREBY APPOINT you to be
18 Our Commissioner,

19 "To inquire into, report upon, and make
20 recommendations concerning The Workmen's
21 Compensation Act, upon subjects other than
22 detail administration.

23 "AND WE DO HEREBY CONFER on you, Our said
24 Commissioner, the power to summon any person
25 and require him to give evidence on oath and
26 to produce such documents and things as you
27 Our said Commissioner deem requisite for the
28 full investigation of the matters into which
29 you are appointed to examine.

30 "AND WE DO HEREBY FURTHER ORDER that all

*Nethercut & Young**Toronto, Ontario*

Our departments, boards, commissions, agencies and committees shall assist you, Our said Commissioner, to the fullest extent, and that in order to carry out your duties and functions, you shall have the authority to engage such counsel, research and other staff and technical advisers as you deem proper.

"TO HAVE, HOLD AND ENJOY the said Office and authority of Commissioner for and during the pleasure of Our Lieutenant Governor in Council for Our Province of Ontario."

"IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Great Seal of Our Province of Ontario to be hereunto affixed.

"WITNESS: THE HONOURABLE WILLIAM EARL ROWE,
A Member of Our Privy Council
for Canada,
Doctor of Laws, Doctor of Social
Science,

LIEUTENANT GOVERNOR OF OUR PROVINCE OF ONTARIO
at Our City of Toronto in Our said Province,
this sixteenth day of June in the year of Our
Lord one thousand nine hundred and sixty-six
and in the fifteenth year of Our Reign.

"BY COMMAND

JOHN YAREMKO

PROVINCIAL SECRETARY AND

MINISTER OF CITIZENSHIP."

THE COMMISSIONER:
Gentlemen, you have heard the terms of reference under



1 which I am to proceed. In this Commission I have the
2 assistance of Mr. George Johnston who sits in front of
3 me who is to act as Secretary, Mr. Estey, sitting at the
4 table in front of me, who will act as senior counsel and
5 Mr. Guthrie who will act as junior counsel. While I
6 expect to be, once these hearings begin, to some extent
7 readily accessible, I think that most matters on which
8 anything arises which you wish to discuss or make some
9 submission regarding you can get in touch with Mr.
10 Johnston or the senior counsel.

11 The function of the Commission is to
12 investigate The Workmen's Compensation Act and make
13 reports regarding it. As you are aware, this type of
14 investigation has occurred periodically. There was a
15 review by Mr. Justice Middleton and later a review by
16 Mr. Justice Roach and there have been reviews periodically
17 of the Acts as they exist in other provinces of the
18 Dominion.

19 I look upon the inquiry as one to discover any
20 facts that are relevant to the matters which I have to
21 investigate and that it is an inquiry not into the
22 conduct of anybody in particular but, rather, into, within
23 reason, the Board. The matters in some letters I have
24 received indicate that individuals are dissatisfied with
25 the particular award. I consider that as far as
26 conditions of that kind are concerned I am excluded from
27 perhaps dealing with them. General matters, administration
28 will come under my consideration.

29 As a consequence, the proceedings here won't
30 be in the nature of adversary proceedings: There is nobody



1 on trial. It is not industry against labour or either one
2 against the Workmen's Compensation Board; it is an
3 inquisition into the facts with an effort to do justice
4 to those who are concerned in dealing with the Board in
5 any way. As a consequence, because I hope to proceed in
6 that way, and not as one would in a court where there is
7 examination and cross-examination, my present thinking is
8 that questions to the witnesses other than questions by
9 counsel acting for the particular witness who is
10 explaining the submission that is before the Board, should
11 not be asked, but that counsel for the Commission
12 will be the one to ask questions in the course of the
13 inquiry. Counsel for the witness, of course, has the
14 right to get up and re-examine the witness or anything
15 of this sort when his own witness is in the box --- he
16 has every right to do that, but the ordinary rules of
17 evidence that apply in a court of law are not going to
18 apply here. I have carte blanche to listen to any
19 kind of evidence or anything that is relevant to the
20 inquiry in an effort to place the inquiry on this basis
21 where I am not sitting as judge here. I hope to have a
22 change made in the setup in the room itself. I will try
23 to get down on the floor and if we can get an arrangement
24 of tables more or less in a circle where I can have my
25 counsel on one side and the Secretary on the other and
26 then various counsel sitting around the table and the
27 witness sitting opposite, perhaps proceeding in a more
28 unofficial way witnesses will feel more comfortable and
29 we will be proceeding on the basis on which an inquiry
30 of this kind should proceed.



1 When I say that I do not intend to preclude
2 other counsel at the hearing having questions put to the
3 witness. If counsel have such questions, I suggest that
4 they be put through counsel for the Commission unless
5 permission is asked and I grant it to examine the witness
6 directly. We will see how things work out. I certainly
7 don't wish to stop anybody asking any relevant questions
8 but, generally speaking, I hope that we can proceed on
9 that basis rather than having a dozen counsel who might
10 be sitting around and everybody jumping up and asking
11 questions. I don't want to hasten matters, but I would
12 like to know that there will be some end to it, and I
13 imagine counsel are just as happy to know that there
14 will be a termination of proceedings within a reasonable
15 time.

16 It is my intention to hold all hearings in
17 public. This is not the type of thing I would think that
18 would ever require a hearing in camera. It is also my
19 present intention to call out the names of those making
20 submissions here or in a moment the Secretary will, and
21 as he does so perhaps counsel can make what comment they
22 like. The names of those making submissions will appear
23 in alphabetical order and I feel that perhaps we will
24 make the most progress if each submission is heard
25 throughout and then when all questions have been completed
26 we will go on to the next submission in alphabetical
27 order. At the end of that time we will hear whatever
28 members counsel feel are necessary from the Board itself
29 or employees of the Board to inform the Commission on
30 either the procedure before the Board or the opinion of



1 the Board or its officers regarding such suggestions as
2 have been made. We also hope to have some actuarial
3 evidence as to the cost of any suggested changes. Things
4 of this sort will develop throughout the inquiry and at
5 the close of the hearing of the submissions we can then
6 call what evidence the Commission sees fit to get a full
7 expression of opinion regarding the submissions that
8 have been made.

9 When that has been done ---- mind you, I don't
10 know whether it is necessary or not ---- I don't know
11 whether it will be possible for counsel to make some
12 argument on what has been heard, but I would hope that
13 it won't be necessary for counsel to rehash again every-
14 thing that counsels' own witnesses have already given
15 in the course of the submissions that have been made.

16 You will be asked as a consequence of what I
17 have said how long an individual submission is likely to
18 take because in that way it is hoped that we can notify
19 organizations as to when their particular submissions will
20 turn up. That probably won't be done more than a few days
21 ahead of time, but you in the meantime can have a fairly
22 good idea of how things are going by reference to the
23 alphabetical list.

24 As to when the hearings will commence, that
25 will be some time in September, depending upon how my own
26 court proceeds, what I find is the situation in my own
27 court as to when I have to sit. They will start some
28 time in September and I hope that most of the month of
29 October will be available for continuing those hearings.

30 Our court reporters are taking down the



1 evidence and if anyone wishes a copy of that evidence it
2 can be ordered. I might say as far as the transcript is
3 concerned it is at your own expense, but you can order
4 from the court reporters transcript of the evidence if
5 you wish.

6 Notice of the first hearing in September will
7 be sent to all those who have made submissions.

8 Perhaps before proceeding I might ask you,
9 Mr. Estey, have you anything you would like to add?

10 MR. ESTEY: Mr. Commissioner, it might be
11 well to put on the record the fact that pursuant to the
12 Order-in-Council read by your Secretary advertise-
13 ments were made in the daily newspapers of Ontario in
14 June announcing this hearing and pursuant to those
15 notices plus a number of notices sent to people who have
16 expressed an interest in this proceeding and in the
17 earlier similar proceedings we have received a combination
18 of briefs and requests for time and complaints about the
19 Board which are not briefs, and as a result of that we
20 have this morning, Mr. Commissioner, a number of people
21 present who have already filed briefs and some have
22 indicated their desire to speak to the Royal Commission
23 in connection with the filing of more formal briefs by
24 them later.

25 Perhaps it would be a convenience to some
26 counsel if we could, before going through the list of
27 briefs to be filed this morning, give an opportunity to
28 at least one or two who spoke to me to speak to you, sir,
29 as to the filing of their brief in the next, we hope,
30 week or two. One who spoke to me was Mr. Fram.



1 representing the Corporation of the City of Toronto.

2 MR. FRAM: If you will hear me, Mr.

3 Commissioner, I have been instructed to ask you, sir,
4 as the Commissioner, for an extension of time for filing
5 the City's submission until September the 30th. The City
6 will in all likelihood be making a submission. It has
7 been the pattern to make submissions in previous matters.
8 I know that there are certain matters that I have in mind
9 legal matters that have arisen and some of the other
10 departments have signified as well that they have certain
11 workings of the Act which they would like to draw to
12 your attention, sir.

13 The difficulty has been the City has moved
14 with what would appear for it to be expedition, but which
15 to someone else might appear quite slow. We received
16 your letters, sir, of July the 14th, and I believe the
17 19th, and the Clerk immediately sent them to the
18 Commissioner of Personnel. He made a report on July the
19 28th to the Board of Control who considered it and on
20 August the 3rd ----

21 THE COMMISSIONER: Well, we sent a letter out
22 on the 14th, but this notice appeared in all the Toronto
23 newspapers and twice during the week of June 16th.

24 MR. FRAM: I am saying that this is what
25 happened, Mr. Commissioner. This is not extenuation,
26 but I am saying what occurred. City Council, I checked
27 this morning, meets only on September the 14th and it
28 would be required as in previous cases in matters of this
29 kind, to have them approve such a thing because we cannot
30 act without them. We require City Council approval.



1 Under those circumstances I would ask your
2 indulgence. I appreciate, as you point out, this earlier
3 notice, but I would ask your indulgence because of the
4 time limitation and the necessity to circularize --- that
5 is a terrible word --- but at least to send it around to
6 all the departments to have an extension of the time
7 until September the 30th, sir, if I may.

8 THE COMMISSIONER: I have already in some
9 circumstances extended the time to other parties who
10 failed to see the notices as they appeared and found
11 difficulty in preparing submissions during the summer
12 due to their staffs not being available. Obviously, I
13 don't wish to preclude anybody from making whatever
14 submissions are necessary, but if the first meeting of
15 the Council is on September the 14th and nothing can be
16 done before that time, then I would ask you, Mr. Fram,
17 that within two weeks after that you will have your
18 submissions ready for the Council and will be able to
19 present them to us on the 21st. What I am seeking to do
20 here because there is a great deal of work before the com-
21 mission's staff in reviewing the matters which have to
22 come before the Commission and preparing whatever
23 examination is necessary as a result, is to endeavour
24 to have before these hearings begin a fairly
25 complete survey of what they are going to have to cover
26 so that we are not going to repeat ourselves and that
27 they in turn will be sufficiently informed and I will be
28 sufficiently informed of what we are likely to have to
29 deal with.

30 If I give you an extension to September 21st,



1 will that be satisfactory?

2 MR. FRAM: It would appear reasonable. I
3 presume that can be done. It will be a little tight, but
4 I believe that can be done.

5 THE COMMISSIONER: Under the circumstances, I
6 will give you that.

7 MR. FRAM: May I be excused?

8 THE COMMISSIONER: Yes. I might add that so
9 far as these various submissions are concerned once a
10 complete submission is in (in a number of cases all we
11 have had is a preliminary of them due to the difficulty
12 of getting a complete submission in by this date) for those
13 interested, anybody interested I think it can be
14 arranged that you can have a copy of any particular
15 submission at your request. That can be arranged, can't
16 it, Mr. Estey?

17 MR. ESTEY: Yes, Mr. Commissioner.

18 THE COMMISSIONER: I don't feel that we should
19 be required to produce two copies, one copy of the
20 preliminaries that are in now and which are incomplete
21 and one of the complete submission when it comes in. Any
22 complete submissions that are in at this time upon request
23 you can be furnished with a copy and so far as the others
24 are concerned when completed upon request you can
25 receive a copy.

26 Now, is there anything further, Mr. Estey?

27 MR. ESTEY: Just this, Mr. Commissioner. There
28 are others here and it occurs to me that perhaps the
29 easiest way to deal with this is to proceed through the
30 list alphabetically with what we have filed and what Mr.

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1 Johnston has, and if we have other people here who have
2 not given us an indication that they will be filing a
3 brief or have not filed a brief, perhaps they might let
4 us know as we proceed through.

5 We have, for example, someone has told me,
6 the Board of Trade of Metropolitan Toronto. We have
7 nothing from them on the record. Perhaps when we come
8 to the B's someone representing the Board of Trade might
9 speak up and we might therefore get a list of all those
10 who have now or will have a submission. I would suggest,
11 Mr. Commissioner, that we perhaps have the Secretary
12 proceed through the list alphabetically of what we have
13 up to now.

14 THE SECRETARY: The list of submissions that
15 we have, some of which are briefs and some of which are
16 only letters, is as follows:

17 The Automotive Transport Association of
18 Ontario, Mr. Elman W. Campbell.

19 THE COMMISSIONER: We will take them indivi-
20 dually as you call them.

21 MR. T. J. SOMMERVILLE: Mr. Commissioner, I
22 represent the Automotive Transport Association. The
23 brief which has been filed this morning in six copies is
24 preliminary in nature only and as I have indicated on an
25 earlier occasion, we would appreciate an opportunity to
26 expand on the document in the submission. If that
27 permission would be granted, we could have everything
28 available by the first week in September.

29 THE COMMISSIONER: I think we will have to
30 extend the time to the first week in September.



1 MR. SOMMERVILLE: Thank you very much, sir.

2 THE COMMISSIONER: Have you any idea at this
3 time how long that submission is likely to take? If not,
4 when you send in your submission send in with it an
5 estimate of what you think it will take.

6 MR. SOMMERVILLE: Yes, Mr. Commissioner.

7 THE SECRETARY: Mr. Elman W. Campbell of
8 Newmarket, Ontario.

9 MR. ESTEY: That is an individual filing which
10 is more in the nature of a letter. I don't think Mr.
11 Campbell is here.

12 THE COMMISSIONER: I had a letter from Mr.
13 Campbell. We have not sent out notices. Was a notice
14 sent to Mr. Campbell? I understood that notices were
15 only going to the corporate companies and corporations
16 that have made submissions, but Mr. Campbell will be
17 notified in the course of time of the hearing and will
18 be allowed to elaborate on what he has written.

19 I have had from a number of individuals
20 letters dealing wholly or in part with their particular
21 problems which might or might not be matters which I
22 have to consider, but in many of these letters there
23 are questions raised which are proper questions to come
24 before the Commission and in the course of time all of
25 those people will be notified and will have an opportunity
26 to come before the Commission as will anybody else who
27 wishes to appear. The hearings will be open, but I would
28 hope to avoid any lengthening of the date in which to
29 make submissions to the Commission beyond what we have
30 already allowed or what will be allowed today.



1 THE SECRETARY: The next is the Canadian
2 National, Canadian Pacific and other railway companies,
3 and the Bell Telephone Company.

4 MR. ESTEY: We have the Board of Trade and the
5 Bell Telephone alphabetically if you want to take those
6 as we go along.

7 THE COMMISSIONER: We will take the Bell
8 Telephone.

9 MR. BURGESS: Mr. Commissioner, on behalf of
10 the Bell Telephone Company I have a brief that I will
11 file with you today. In substance what we propose is
12 that at one of the hearings in Toronto we will produce
13 a witness from our medical department who has had
14 considerable experience over the past years with cases
15 that have been referred to the Workmen's Compensation
16 Board, so that this brief that I am filing today is merely
17 a preliminary submission outlining one or two points that
18 we will be bringing out when we produce our witness at
19 one of the public hearings.

20 THE COMMISSIONER: You do not propose to enlarge
21 upon that submission other than by evidence? Your
22 submissions are complete other than the evidence to be
23 heard?

24 MR. BURGESS: When I produce the witness at
25 the hearing he will give the evidence that will
26 substantiate the submissions that I am now making in the
27 brief which I propose to leave with you today. Mr. Estey,
28 will you accept my submission?

29 THE COMMISSIONER: Can you make any estimate,
30 Mr. Burgess, of how long it is likely to take?



1 MR. BURGESS: I would think that my witness
2 would be able to testify as to the submissions that we
3 have made in our brief within twenty to thirty minutes.

4 THE COMMISSIONER: The Board of Trade?

5 MR. RIGGIN: My name is Riggin. I am
6 appearing for the Board of Trade of Metropolitan Toronto,
7 and in lieu of a brief we have written you a letter
8 signed by me in my capacity as Chairman of the Labour
9 Relations Committee. I don't think we need read it. In
10 essence it simply says that we respectfully request more
11 time to make a submission. We do outline or indicate
12 in our letter the topics and subject matters which we
13 wish to cover. Our problem is not unlike Mr. Fram's
14 problem that in important matters such as this we want
15 the Council of the Board to fully approve all submissions
16 made to you and they will not be meeting until late
17 September.

18 We have formed a subcommittee: It is working
19 on a submission now. Perhaps I could suggest, my lord,
20 we have an unfortunate situation because we are a "B".
21 Perhaps we could go to the end of the list.

22 THE COMMISSIONER: This is what I want to
23 avoid, submissions coming in throughout the hearings.
24 When is your Council meeting?

25 MR. RIGGIN: The third week in September, my
26 lord.

27 THE COMMISSIONER: Well, you had better get
28 your submissions ready and get them in then in the third
29 week, if you will.

30 MR. RIGGIN: Thank you.



1 THE SECRETARY: The next on my list is Mr.
2 George Charity of Gagnonville, Quebec.

3 MR. ESTEY: That is another individual one,
4 Mr. Commissioner.

5 THE COMMISSIONER: We can omit the individual
6 ones.

7 THE SECRETARY: Construction Safety Association
8 of Ontario. I am sorry, I forgot, the Canadian National,
9 Canadian Pacific and other railway companies.

10 THE COMMISSIONER: I think, gentlemen, we will
11 revise this list so that they come in alphabetical order
12 so far as corporations or labour unions or other
13 organizations making submissions are concerned, because
14 we know they will be represented, probably represented,
15 and we then will have some idea of how they are going to
16 proceed. If we write to individuals they might or might
17 not appear and it would be more difficult. I think we
18 can put all of the individuals together at the end of the
19 other submissions. We will revise the list in that
20 respect.

21 THE SECRETARY: Shall I leave them out now?

22 THE COMMISSIONER: Leave them out now. If any
23 of them are here and wish to say anything, they will
24 be heard.

25 THE SECRETARY: The next on the list the
26 Construction Safety Association of Ontario.

27 MR. ESTEY: I think the railways have something
28 to ask the Commission.

29 MR. BAND: My name is Lawrence Band and I
30 appear on behalf of the Canadian National Railway Company



1 and the other parties named. A brief has been submitted
2 on behalf of the parties who have joined in in regard to
3 the brief and it is intended that it be an outline of our
4 position. In this regard I would hope that in the event
5 that certain matters might be brought up by the
6 Commission that we might be given an opportunity to give
7 an oral submission.

8 THE COMMISSIONER: I am sorry, I haven't heard
9 the latter part of what you just said.

10 MR. BAND: It was intended this brief would be
11 an outline of our submission and it was hoped that in the
12 event that matters not covered by the brief arise in the
13 course of the Commission that we be given the further
14 opportunity to make oral submissions or written sub-
15 missions, as the Commission permits. There are a number
16 of solicitors here, Mr. Commissioner, who represent the
17 parties named in the schedule attached to the brief.

18 MR. CHASE: Mr. Commissioner, Chase is my name
19 and I am appearing for the Toronto Transit Commission,
20 one of those companies that joined in the brief submitted
21 by the Canadian National Railways, and I support the
22 submissions made by Mr. Band.

23 THE COMMISSIONER: You are not proposing to
24 call anybody in connection with it unless you wish to call
25 somebody in reply? If the matter is not covered by
26 somebody else, you do not propose to call a witness, is
27 that what you say?

28 MR. BAND: I believe that the railways that have
29 joined in have had very little opportunity to see the
30 brief in its entirety. It was filed on the 8th of August.



1 and they would like the opportunity to submit further
[3] 2 submissions, and perhaps make oral submissions on any
3 matters that may arise during the course of the
4 Commission.

5 THE COMMISSIONER: Well, of course, you are
6 not proposing to make any further submissions unless it
7 is in reply to something that arises?

8 MR. BAND: Yes.

9 THE COMMISSIONER: Do you propose to be
10 present at the hearings?

11 MR. BAND: Yes, I think a representative of
12 the parties will be present at the hearings. Our position
13 is set out in this regard in a paragraph in the brief.
14 We state:

15 "As it is intended that this brief con-
16 tain but an outline of our position,
17 it would seem inappropriate that we
18 should set out in detail our views
19 in relation to each benefit, condition
20 or obligation and state why we think
21 each should not be altered. We take
22 the liberty of assuming that if and
23 when representations are made advocating
24 any such change or changes that we
25 will be permitted to make such written
26 or oral submissions to you as may be
27 appropriate and of assistance to you."

28 THE COMMISSIONER: I think you will have to
29 proceed in the ordinary way as far as the submissions
30 you are making are concerned and call what evidence you



1 feel is necessary. As far as anything arising throughout
2 the course of this Commission, then it is hoped that if
3 counsel is present that questions will be put to the
4 witnesses in the box to elucidate whatever answers or
5 objections you might have to what is brought forward, but
6 I won't shut off any reply that is pertinent, that will,
7 perhaps at the end of the other submissions, help to
8 make wholly clear the situation. On the other hand, I
9 do not contemplate that this is going to be a proceeding
10 where submissions are heard or the information of the
11 Workmen's Compensation Board is heard and then we start
12 all over again calling witnesses in reply. I hope we
13 are not going to get into that.

14 THE SECRETARY: The Construction Safety
15 Association of Ontario.

16 The International Nickel Company of Canada
17 Limited.

18 MR. OSLER: C. R. Osler. I am appearing
19 for the International Nickel Company. I have filed with
20 the Commission this morning a letter advising you that
21 we have not been able to complete a brief at this point.
22 The main items on which we intend to make submissions
23 are set out in that letter, but we have not been able
24 to complete a brief or put it in a form which would be
25 a proper submission at this point.

26 THE COMMISSIONER: When will you have a
27 complete brief available?

28 MR. OSLER: Well, time has been a little
29 difficult recently, sir. I would like, if we could,
30 until the middle of September.



1 THE COMMISSIONER: Well, we have had two
2 requests that have gone on into September which I have
3 allowed because in either case they are the kind of
4 organizations in which the board or council does not
5 meet until the middle of September, but I think if you
6 had an extension until the first week in September or
7 some time during the first week in September you should
8 have something ready by that time.

9 MR. ESTEY: They have already asked us, Mr.
10 Commissioner, in connection with the difficulties arising
11 out of the recent labour trouble in Sudbury for the
12 delay, and I take it the strike went on longer than they
13 thought.

14 THE COMMISSIONER: I had overlooked that.
15 Well, will you make an effort to get it out by the end
16 of the first week in September, Mr. Osler?

17 MR. OSLER: I will do my very best, sir. If we
18 do run into difficulties, certainly I will speak to you
19 later about it.

20 THE COMMISSIONER: Yes.

21 THE SECRETARY: The next is the International
22 Railway Brotherhoods. It is the legislative committee
23 of the International Railway Brotherhoods.

24 THE COMMISSIONER: We have notified everybody
25 that this is only a preliminary hearing, so there are
26 some parties who will not be here.

27 MR. ESTEY: This is rather a complete brief,
28 Mr. Commissioner, so I would think they would intend to
29 come later and present it.

30 THE COMMISSIONER: In any cases where you have



1 a complete brief you might just note them there so that
2 they will be available for the information of those who
3 might ask for copies. You might just note it as you go
4 along. Of the ones you have heard you have got one from
5 the railways that is complete.

6 MR. ESTEY: The Automotive Transport
7 Association, Mr. Commissioner.

8 THE SECRETARY: Yes. That is the only one.

9 MR. SOMMERVILLE: The Automotive Transport
10 Association brief is not complete. As I have outlined
11 earlier, it is not a complete brief at this time.

12 THE SECRETARY: The next one is Northern Forest
13 Products.

14 Ontario Federation of Labour.

15 MR. WEISBACH: My name is Henry Weisbach. We
16 have mailed a letter to you outlining the major points we
17 are going to discuss in our brief and we shall have
18 sufficient copies of the brief available to you by
19 September the 1st if we can get that much time.

20 THE COMMISSIONER: All right.

21 MR. WEISBACH: Thank you.

22 MR. ESTEY: I wonder if it would be convenient
23 to ask Mr. Weisbach if they have any idea how long they
24 will require to present their brief with or without
25 witnesses or officers or whatever you wish to present?

26 MR. WEISBACH: We don't intend to call any
27 witnesses. The officers will read the brief and I
28 imagine it will be about 25 to 30 minutes.

29 THE COMMISSIONER: We are asking, and have not
30 done it in every case, how long the submission is likely to



1 take, but perhaps in any further communications or those
2 who intend to send in briefs who have not completed them
3 at this time will you please state with the letter
4 accompanying the brief how long you think it is likely
5 your witness will take in presenting them?

6 THE SECRETARY: Next the Ontario Medical
7 Association.

8 DR. SAWYER: We have a complete submission
9 which we are filing this morning. The presentation should
10 not take more than half an hour.

11 THE COMMISSIONER: Thank you, Doctor.

12 THE SECRETARY: Next is Ontario Forest
13 Industries Association.

14 MR. MacLAGGAN: My name is Mac MacLaggan,
15 and I represent the Ontario Forest Industries Association,
16 and we have a brief which we can file this morning. It
17 is a very short brief. I would like to ask some
18 questions if I may.

19 THE COMMISSIONER: Oh, yes, I think that any
20 questions that arise about the conduct of this inquiry or
21 anything else that occurs to counsel this morning, that
22 is what the purpose of this preliminary hearing is for.

23 Mr. MacLAGGAN: In representing the Ontario
24 Forest Industries Association I am not familiar with the
25 procedure in this case and I don't know and I didn't
26 know that we were going to have counsel unless I am it.
27 In fact, I think it was my intention that we sort of put
28 in a brief and the thing was sort of looked after very
29 efficiently, but I guess that is not it.

30 THE COMMISSIONER: I think what we will do in



1 a case of that kind is when we reach your brief we will
2 have it read. If you will appear and read it, fine, and
3 you can be asked questions concerning that. If you don't
4 wish to have counsel here you don't have to have counsel,
5 but questions in connection with, it if you are informed
6 about it, either you or someone else should be present,
7 I think, when your brief is reached to answer any
8 questions that may arise. You don't have to do that;
9 it is sufficient if you just file ^{it,} /in which event we will
10 have it read, but I suggest if you have no counsel
11 representing you that you appear yourself perhaps and
12 read it.

13 MR. MacLAGGAN: Very good, sir. I think we
14 will follow your suggestion. We have rather hurried it
15 and I have noticed there have been some extensions.
16 I do not think there will be any extensions on this
17 brief except what some of my members or directors might
18 think of in the meantime. If there is a point comes up
19 that they might be very sincere in, I would take it you
20 would not prevent us from submitting it.

21 THE COMMISSIONER: That is quite all right.

22 MR. ESTEY: I wonder if there is anyone here
23 from the Ontario Municipal Association.

24 MR. DUNBAR: My name is Mac Dunbar. I am
25 Secretary of the Ontario Municipal Association. We have
26 submitted, as you requested, a preliminary brief, but
27 this brief contains those matters which I think the
28 Association would approve at its forthcoming convention
29 starting on August 21st to 24th. They are resolutions that
30 have been approved over the past six or seven years on the



1 Workmen's Compensation Act. I, as Secretary-Treasurer,
2 have submitted these two, but I will need approval at
3 the convention to submit these formally. There are also
4 two late resolutions from the Town of Timmins, so I would
5 respectfully request that we be given an extension, say---
6 the convention is over on August 24th. If I could have
7 until the following Monday to submit a more formal
8 report to you.

9 It would be expected that our President at
10 that time will be at the official hearing with, maybe,
11 one or two representatives from the North because this
12 is where these resolutions come from in their original
13 order.

14 THE COMMISSIONER: Are the representatives
15 from the North from Timmins or any further north?

16 MR. DUNBAR: Timmins, Township of Teck, Sudbury --
17 we haven't decided on this particular phase as yet.

18 THE COMMISSIONER: Nothing from the Head of
19 the Lakes?

20 MR. DUNBAR: No.

21 THE COMMISSIONER: Yes, Mr. Dunbar, that will
22 be granted.

23 MR. DUNBAR: Thank you very much.

24 THE SECRETARY: I have no brief here from the
25 Ontario Mining Association, but I understand there is one
26 coming.

27 MR. PERRY: My name is Perry. I am the
28 Executive Director of the Ontario Mining Association.
29 We have a brief to submit. In speaking to Mr. Guthrie on
30 our submission I was led to believe that all we should do



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Toronto, Ontario

1 was outline the areas in which we had some concern with
2 some note as to the points which were involved in it.
3 This we have done, but this will require some further
4 elaboration which I understood we would have an
5 opportunity to give at the appropriate time.

6 THE COMMISSIONER: At the hearing.

7 MR. PERRY: At the hearing. The Mining
8 Association, of course, represents a good many people and
9 it is scattered pretty widely throughout the province.
10 Some of the representatives whom we intend to have at the
11 hearings come from all over the province and including
12 the western part, too. We would require some notice to
13 sort of have them that they could be available at the
14 appropriate time.

15 THE COMMISSIONER: Have you an office here in
16 the city?

17 MR. PERRY: Yes.

18 THE COMMISSIONER: Well, Mr. Estey can get in
19 touch with you about what you are expecting to have
20 or what arrangements are necessary at the time in calling
21 these witnesses.

22 MR. PERRY: There is only one other point I
23 would like to add. We found that we were a little bit
24 rushed in time and we only just finished this brief
25 yesterday. It has not been handed to the members as yet.
26 It has been discussed with some of the directors so that
27 there may be some supplementary recommendations that we
28 would like to make later.

29 THE COMMISSIONER: We have run into this
30 difficulty due to the vacation time. We will just have to



1 do the best we can with it if there are some amendments.
2 If there is anything of the kind contemplated, please
3 notify the Secretary of what your additional submissions
4 are as soon as you can.

5 MR. PERRY: Right.

6 THE SECRETARY: The Ontario Pulp and Paper
7 Safety Association.

8 MR. SCOTT: Ross Scott, Mr. Commissioner. We
9 presented a single copy of our brief through our
10 President Mr E.E. Grainger of Abitibi Company on August
11 the 3rd and I have brought an additional five copies
12 which I will turn over to Mr. Johnston. We will take
13 no more than fifteen minutes to present our brief.

14 THE COMMISSIONER: I suspect that all of these
15 estimates are low. The estimates that are given are
16 what the counsel that give them think will be necessary
17 so far as bringing out their own examination is
18 concerned, but I have no doubt that counsel for the
19 Commission will have a number of questions to ask
20 regarding it and others might and as a consequence it
21 will maybe take very substantially longer than these
22 rather short estimates that we have had. It would be nice
23 to think that we were going to go through this whole
24 inquiry at that speed, but I have my doubts.

4
25 MR. ESTEY: Is there anyone here from the
26 Ontario Provincial Conference of the Bricklayers, Masons
27 and Plasterers International Union of America?

28 THE SECRETARY: I have a brief from them.

29 The Provincial Building and Construction
30 Trades Council of Ontario. I have a brief from them.



1 The Retail Council of Canada.

2 MR. COX: The Ontario Federatbn of Construction
3 Associations. I think you have missed us. I have six
4 copies of a brief to file this morning, Mr. Commissioner.
5 I am Trevor Cox.

6 Mr. Commissioner, we would hope at the
7 hearings in September that we would be able to field
8 some representatives from some of the trade associations
9 that we represent to elaborate on the points that are
10 expressed in the brief. Unfortunately, there are some
11 dates that are in conflict with the opportunity of
12 getting these people to come out so I have put a
13 note on the top of the brief stating what those dates
14 are, if they could be avoided.

15 THE COMMISSIONER: It is quite possible in
16 view of the number of submissions that we can arrange to
17 put you at the bottom of the list or some place that
18 would be more convenient. That you can arrange with the
19 Secretary. When we send out notice of the first hearing
20 you can then contact the Secretary and arrange as to time
21 In the meantime he has those dates which you wish to
22 avoid.

23 MR. COX: Yes, sir. Thank you.

24 THE SECRETARY: Is that the same as the
25 Provincial Building and Construction Trades Council of
26 Ontario?

27 MR. COX: No.

28 THE SECRETARY: The Provincial Building and
29 Construction Trades Council of Ontario.

30 Then the Retail Council of Canada.



1 MR. McKICHAN: Mr. Commissioner, my name is
2 A. J. McKichan. I represent the Retail Council of
3 Canada. I have six copies of a submission this morning
4 which I will file with the Secretary. I don't think our
5 submission will take longer than fifteen or twenty
6 minutes in the presentation, but of course, the
7 examination may take longer. With your permission I will
8 file these submissions now.

9 MR. SUTHERLAND: Mr. Commissioner, I believe
10 another "O" has been missed, the Ontario Chiropractic
11 Association. My name is Donald Sutherland and I am
12 Secretary of the Association. Our brief has been completed
13 and I have six copies to file with you this morning.

14 MR. ESTEY: Have you any estimate as to how
15 long it will take or whether you are going to call
16 people to present this brief?

17 MR. SUTHERLAND: I believe that three of our
18 delegates will be present, Mr. Commissioner, and would
19 estimate the time at perhaps 20 to 25 minutes.

20 THE SECRETARY: The United Electrical, Radio
21 and Machine Workers of America.

22 MR. FERGUSON: My name is Norman Ferguson.
23 We filed a latter stating the points on which we would
24 like to file a submission and with your permission we
25 could have this brief in by the end of this month.

26 THE COMMISSIONER: That would be satisfactory
27 in view of the extension we have given others.

28 MR. FERGUSON: It will probably take about 30
29 minutes.

30 THE COMMISSIONER: The United Steelworkers of



1 America

2 MR. INGLE: Mr. Chairman, I am appearing for
3 the United Steelworkers of America. We have submitted
4 to you, sir, by letter an outline of the specific points
5 that we would like to raise with the Commission. I would
6 like to ask you, sr, for an extension of time for the
7 filing of our detailed brief to September 15th. I may
8 explain that we have been unable to do the detailed work
9 we had hoped on our brief because of some major,
10 industrial disputes which have taken place in the last
11 little while, one of which Mr. Osler has referred to
12 already and I would plead with you, sir, for an
13 extension of time to that date.

14 I expect that the presentation of our detailed
15 brief would take approximately one hour.

16 THE COMMISSIONER: It may be necessary, in
17 view of these requests, to postpone our hearings to the
18 latter part of September.

19 MR. ESTEY: I was thinking of that, sir. I
20 think that probably is going to be necessary unless you
21 wish to break it up into different parts and deal with
22 those which are on hand now.

23 THE COMMISSIONER: In view of the matter of
24 time I will have to make the same concession to you, Mr.
25 Ingle, as I have to Mr. Osler. If September the 15th
26 is not satisfactory in any event we have to accept it
27 and if you can get it in before that date we would
28 appreciate it.

29 MR. INGLE: Thank you, sir.

30 THE SECRETARY: That is the last.



1 MR. ESTEY: Are there any here that have not
2 been called on?

3 MR. KEEN: Sir, I am representing the
4 Ontario Division of the Canadian Manufacturers' Associa-
5 tion. I have six copies of the brief to file with you
6 this morning. If during your hearings this is to be read
7 into the record this will take approximately 25 minutes
8 to deliver. In addition we would like to have two or
9 three people present information to elaborate on what
10 our brief says. I don't think that will take more than
11 half an hour to present. This is not counting time for
12 any questions that the members may put.

13 THE COMMISSIONER: That is satisfactory. You
14 can have all the time you want.

15 MR. IRELAND: Mr. Commissioner, I represent
16 the Ontario Federation of Fire Fighters of Ontario.
17 We would like to have an extension until not later than
18 August 31st. Our brief will be in by that time and it
19 should not take half an hour to present.

20 THE COMMISSIONER: Thank you.

21 MR. YOURT: My name is Yourt. There is a
22 letter there on behalf of Rio Algom Mines Limited
23 giving a very brief outline of the subjects we wish to
24 cover. Our submission will be ready by the end of the
25 first week in September and it should require no more
26 than half an hour.

27 THE COMMISSIONER: Thank you.

28 MR. KENNEDY: My name is William Kennedy from
29 the International Union of Mine, Mill and Smelter Workers
30



1 I have a brief for filing this morning, Mr. Commissioner,
2 plus some additional material which we have marked as
3 exhibits to which we make reference in our briefs such
4 as the Report of the McIntyre Research Foundation and
5 presentations that we have made to other Royal
6 Commissions.

7 I hope, Mr. Commissioner, that the report of
8 Mr. Justice Roach and Mr. Justice Sloan will be in the
9 hands of the Commission. They are a rather scarce item
10 and we make reference to them and we believe that they
11 will be helpful to you, Mr. Commissioner.

12 THE COMMISSIONER: I have read Mr. Justice
13 Roach's report. I read that of Mr. Justice Tyso in
14 British Columbia, but I have not read that of Mr. Justice
15 Sloar .

16 MR. KENNEDY: We make reference to this, Mr.
17 Chairman. I think the reading of our brief will take
18 some 25 minutes to an hour. However, I can't give you an
19 estimate as to the length of time our full presentation
20 will take because we have always followed these Royal
21 Commissions from beginning to end and we intend having
22 our Compensation Officer attend all hearings possible,
23 Mr. Chairman.

24 There is one question I wish to ask, Mr.
25 Commissioner, and that is in respect of authorities who
26 are mentioned in our submission such as authorities on
27 industrial disease. There are quite a number in Canada
28 and in Toronto close to the Commission who may be readily
29 available. However, some of the world authorities are
30 in the United States and we have studied with great



1 interest the work that these doctors and scientists have
2 been doing and in our opinion they could only add to the
3 work of the Commission and be of great assistance to you,
4 Mr. Commissioner.

5 We are prepared to discuss with you the names
6 of some of these people to see if they would be available
7 to appear before you in support of any of the points
8 raised in submissions. However, I wanted to make that
9 point because in appearing before Mr. Justice Roach in
10 1949 and 1950 reference was made to some of the experts
11 in this field and unfortunately they were not there and
12 the contribution which they could have made was negatived
13 because of no arrangement being made prior to any session
14 to see if they were available to appear.

15 THE COMMISSIONER: Mr. Justice Roach said
16 he could have called them, but they had not been called.
17 What I suggest is that you, if you will, might furnish
18 the Secretary or furnish me with a memorandum of what you
19 have in mind, who the people are you have in mind and,
20 if necessary, you and I can discuss this later on with
21 counsel or you can discuss it with counsel. I have no
22 doubt that in some of these matters it will be necessary
23 to have some expert opinion. We will certainly review
24 your submission.

25 MR. KENNEDY: My last point, Mr. Chairman: I
26 know that we are prepared to file a sufficient number of
27 briefs tomorrow or the next day to supply everyone who
28 may be attending the hearings before you, Mr.
29 Commissioner, and I believe it would be extremely helpful
30 if all organizations and individuals submitting briefs



1 would submit a sufficient number to the Secretary and
2 then if you had these briefs you would know in what
3 subject you were interested and could make definite
4 arrangements to appear at that particular time and I
5 believe that if this were followed it would certainly
6 expedite the work of the Commission.

7 THE COMMISSIONER: Well, I have already stated
8 that we will try to have available copies of these
9 submission for anybody that wants one, so you can
10 certainly get what you want, but it will be a great help
11 if you file 30 copies. It is not going to be a large
12 number. How many have you got there now, Mr. Johnston?

13 MR. ESTEY: 26.

14 THE COMMISSIONER: You can find out from the
15 Secretary how many you think need to be filed.

16 MR. KENNEDY: I could put my request in for a
17 copy of all briefs right now, Mr. Chairman.

18 THE COMMISSIONER: Well, we will try to see
19 that you get them.

20 MR. KENNEDY: Thank you very much. But if any
21 will put in 30 it will be a great help.

22 MR. TUFTS: Mr. Commissioner, I am ^{from} the Christian
23 Science Committee on Publications for Ontario. The name
24 is L. A. Tufts. We were in touch with you regarding an
25 extension, but we have been able to complete our brief
26 and I would like to present four copies of it this
27 morning. This is not a lengthy brief. There are some
28 attachments, but I don't believe those would have to be
29 read at the formal hearing. The brief is about seven
30 pages in length, double spacing, so this should take 20



1 minutes to half an hour --- somewhere in that area for
2 our presentation.

3 We are interested, of course, in workmen who
4 are Christian Scientists and our brief covers that point
5 quite fully.

6 THE COMMISSIONER: Thank you, Mr. Tufts.

5 7 Is there anyone else who wishes to make a
8 representation? Are there any other matters that should
9 come up at this time?

10 MR. ESTEY: I don't think so, Mr. Commissioner.
11 We will make representations by mail to all those who
12 have filed submissions either now or hereafter as
13 arranged with you, sir, and it may be that we may be able
14 to programme the hearings so that people will know
15 precisely the time at which we would like them to attend.

16 I trust that prior to the hearings we will
17 be able to make the copies that you require or anybody
18 else requires who comes around asking for copies of these
19 briefs. We have not got enough copies, obviously, of any
20 of them now, but in the next two or three weeks we
21 should have those copies. I think those are all the
22 matters which have come to our attention, sir.

23 THE COMMISSIONER: There will be a notice sent
24 to everyone of the time at which the hearings will
25 commence. There will be a notice sent to individuals or
26 counsel when their own submissions are expected to be
27 heard throughout the following period. I think perhaps
28 we could send notice to everybody after all the
29 submissions have been heard as to witnesses to be
30 called by counsel for the Commission and others such as



1 Workmen's Compensation and so on. It is possible that
2 throughout the hearings at some time or another we may
3 wish to elucidate by calling a physician or somebody else
4 at that time rather than wait until the end, but generally
5 speaking, it is contemplated that we will proceed in the
6 manner which I have stated.

7 I failed to mention that we have as an
8 advisor here on the Commission Mr. Kerr of the Workmen's
9 Compensation Board to brief us on the detail of the
10 Board's operation in connection with any of these matters
11 and he is also available to any of you gentlemen who wish
12 to ask him for information or get information from him
13 regarding any particular thing. I am sure that is right,
14 Mr. Kerr.

15 MR. KERR: It certainly is, sir.

16 THE COMMISSIONER: Mr. Kerr will do whatever he
17 can to assist this inquiry.

18 If there is nothing further to be brought
19 before the Commission at this time, the hearings will
20 stand adjourned until a time in September of which you
21 will be notified.

22
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25
26 ----Adjourned.

PROVINCE OF ONTARIO

ROYAL COMMISSION

ON

THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO, ONTARIO

VOL. NO. 10001-10002 DATE

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1 IN THE MATTER OF The Public Inquiries
2 Act, R. S. O., 1960, Ch. 323

3 - and -

4 IN THE MATTER OF an Inquiry Into and
5 Report Upon The Workmen's Compensation
6 Act.

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Public Hearings

BEFORE: The Honourable Mr. Justice W.A.
McGillivray, Commissioner, at Room 200,
67 Richmond Street West, Toronto, Ontario,
on Monday, 26th of September, 1966.

=====

APPEARANCES:

W.Z. Estey, Q.C.)
and) Counsel to the Commission
H.D. Guthrie)

=====

G.A. Johnston Secretary

=====

ALSO PRESENT:

J.L. Goodman Automotive Transport Association
of Ontario

W.R. Burnett, Q.C.
and Canadian National Railways et al
G.C. Butterill

T.G. O'Connor Board of Trade of Metropolitan
Toronto

C.S. Osler, Q.C. International Nickel Company of
Canada Limited

W. Kennedy International Mine, Mill &
Smelter Workers (Canada)

D.F. Hamilton
and Ontario Federation of Labour
J.H. Craigs



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38

1 M. McLaggan Ontario Forest Industries
Association

2 Dr. W.J.S. Melvin,
3 Dr. B. H. Young,
4 Dr. G. S. Sawyer,
Dr. J. E. Barnard

Ontario Medical Association

5 W.H. Oliver
and
6 D. A. Keen

Canadian Manufacturers'
Association

7 G.N. Yourt

Rio Algom Mines Limited

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28 York Street, Toronto 1, Ontario.

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30



1 ---On commencing at 10.00 a.m.

2
3 THE COMMISSIONER: Well, gentlemen, we are
4 really experimenting to some extent this morning in the
5 setup in this room. I am anxious to have it so that
6 any of those immediately concerned are seated and any
7 of those who may want to take notes there would be
8 reasonable provision for them. As a consequence, I was
9 considering whether we could enlarge this arrangement
10 of tables by the addition of, say, two more down there
11 at that end. In that case it will cut down on the
12 number of seats available at the back. I am anxious to
13 use this room or a room like this that is convenient to
14 people in the downtown area rather than getting up to
15 the Parliament Buildings or some place else where it is
16 possible we might have had better accommodation.

17 As I said before, I was anxious to
18 get away from any sort of a courtroom atmosphere or
19 legalistic atmosphere in these hearings. We want them
20 to be as informal as possible and the arrangement for
21 the time-being, at any event, is that counsel for the
22 Commission have the tables on the left, Mr. Estey and
23 Mr. Guthrie. Mr. Johnston, the Secretary, will be here
24 beside me. I think perhaps I will have to move over
25 and give him a little more space to work in, and those
26 people interested in the immediate briefs will be
27 occupying the tables on my right and in the course of
28 their presentation of their submissions counsel
29 representing the persons submitting the brief or
30 organizations will be allowed to examine at length. At



1 the end of that time --- and again we are to some extent
2 experimenting --- I expect that any additional examina-
3 tion will be carried out by counsel for the Commission.
4 As I said previously, instead of a lot of examinations
5 from various people in the room as far as possible we
6 will submit questions through counsel for the Commission,
7 but if that is not possible we will have to widen out
8 the scope so that questions can be asked if it is going
9 to be a lengthy examination.

10 I don't want to preclude any necessary
11 elucidation of whatever has been said, but I don't want,
12 on the other hand, for the benefit of all of us that an
13 examination of any particular person should get so
14 lengthy by reason of too many people going over the
15 same thing.

16 I don't think it will be necessary,
17 generally speaking, to swear witnesses --- again in an
18 effort to keep the proceedings informal and we will stay
19 away from that unless in particular this is material
20 and I feel as Commissioner that they should be sworn or
21 counsel advises they should be and I don't see any
22 objection if some one of you requests that a witness
23 be sworn.

24 The method of proceeding will be, as I
25 stated previously, subject by subject. You are aware
26 that there is a change from the way I contemplated
27 proceeding in the first instance, and it, I understand,
28 is causing inconvenience to some parties, but I have
29 satisfied myself that it is the only efficient way of
30 carrying on this examination. To do otherwise means that



1 there may be twenty points raised in a brief, as there
2 is in many of these briefs. You would have to go over
3 each one of those twenty points in turn if you were
4 taking it brief by brief and then start all over again
5 on the next one. You are jumping back and forth and it
6 would be difficult to relate them and you would always
7 have to go back and try to recall what was said on a
8 previous occasion maybe weeks before. As a consequence,
9 we are going to proceed in this manner.

10 It is not intended, however, --- at least
11 I don't propose that by so proceeding that anybody will
12 be precluded from giving evidence. If maybe somebody
13 has an industry up in the country and he is coming in,
14 a small industry or something of this sort or many
15 other cases if it is impossible or not feasible for
16 them to be represented on the various occasions when the
17 submissions they have made are being considered, then
18 I will make arrangements to hear them, all of their
19 submissions at one time if necessary. I don't think
20 that is going to be necessary in more than one or two
21 cases, but certainly nobody is going to be prevented
22 from fully presenting whatever argument they have or
23 whatever can help the Commission in this investigation
24 which we propose to make, and I will say this, that
25 anyone who has made a submission and who is unable to
26 be present when that particular subject is being heard,
27 his submission will be read in at the time and
28 considered along with the other representations.

29 I hope to commence these hearings at
30 ten o'clock in the morning, we will adjourn for lunch for



1 an hour and then probably carry on until about 4.30 in
2 the afternoon. Generally speaking, the parties will be
3 heard alphabetically as their names appear on the briefs
4 submitted. It is possible on occasion that we will
5 have to make a change, but generally speaking, that is
6 the method in which we will proceed.

7 Now, before going on, Mr. Estey, is
8 there anything you wish to add?

9 MR. ESTEY: I don't think so, sir. There
10 are some people who have indicated that they will be
11 here tomorrow because of witness problems.

12 The people you are dealing with today,
13 Mr. Chairman, the first one with a brief which raises
14 this issue is the Automotive Transport Association of
15 Ontario.

16 MR. J. L. GOODMAN: Mr. Chairman, I am
17 General Manager of the Automotive Transport Association.
18 Our counsel, Mr. T. J. Somerville, is unable to be here
19 today. I have been requested to ask permission of the
20 Commission to have our submission dealt with all at one
21 time. It is utterly impossible for us to be represented
22 at all of the hearings. We have dealt with a large
23 number of subjects in our submission and we feel it
24 would be absolutely impossible to have someone here
25 continually, at least on our staff, unless we retain
26 some outside counsel to represent us. Mr. Somerville
27 had a long-standing commitment and he is in Ottawa
28 this week.

29 THE COMMISSIONER: Well, what we will
30 have to do ---- I should consult counsel on this matter----



1 I think that we will proceed subject by subject and
2 then make arrangements to hear you at a later time.
3 Mr. Estey?

4 MR. ESTEY: I take it that Mr. Goodman's
5 Association cannot appear this week.

6 MR. GOODMAN: That is correct.

7 MR. ESTEY: But could appear next week?

8 MR. GOODMAN: I have to consult with
9 someone on that.

10 MR. ESTEY: I think you should, if you
11 will, let us know when you will appear and we can
12 schedule it accordingly, although at that time you will
13 be somewhat of a fish out of water because everybody
14 else in the room will be interested in some other phase
15 of the matter. If you would be good enough to let me
16 know after you talk to Mr. Somerville.

17 MR. GOODMAN: I might make this
18 observation. Before Mr. Somerville left he had
19 expressed the desire that if we can't secure the
20 permission of your Commission to make our submission all
21 at one time we are prepared to be here at your
22 convenience any time after this week.

23 THE COMMISSIONER: Well, in any event,
24 you did make it clear this morning. I think on this
25 particular point we will consider reading in your
26 submission when you can't appear and make representations
27 at a time to be arranged with counsel for the Commission.

28 MR. GOODMAN: Thank you.

29 MR. ESTEY: Mr. Chairman, the next
30 brief filed dealing with the subject to be taken today,



1 the question of appeal procedure ----

2 THE COMMISSIONER: Do you intend to read
3 in the Automotive Transport?

4 MR. ESTEY: I thought with all those
5 who are here we should take those and then read in all
6 those who are not here. Otherwise, we are holding up
7 people.

8 The Canadian railways grouped together
9 filed a composite or joint brief over the signature of
10 W. R. Burnett, Q.C., and if they are ready to proceed,
11 we might hear their submission now on appeal procedure.

12 THE COMMISSIONER: This brief is filed
13 by the Canadian railways?

14 MR. ESTEY: Yes, it is, under Canadian
15 National Railways, et cetera. I suppose Canadian Pacific
16 won't mind, that is alphabetical.

17 THE COMMISSIONER: And you are addressing
18 yourself to this particular point, are you?

19 MR. BURNETT: Yes. Mr. Butterill of
20 the C.P.R. is here with me. But it seems to have fallen
21 upon me to deal with these points. Specifically, in
22 the brief as filed, Mr. Commissioner, the present point
23 is dealt with at page 7, including an appendix where we
24 have set forth, a possible ---- I don't put it any
25 higher than that --- form of exemption to be included
26 in the Act.

27 The portion of our brief does not
28 deal at any length with the need for this change. It is
29 confined to one paragraph. Perhaps I had best elaborate
30 very briefly on the reason why we felt this insertion is



1 called for.

2 I should perhaps state, first of all,
3 that to the best of my knowledge the only provinces
4 which do have a specific reserved right of appeal to
5 courts in these cases, the Court of Appeal of each
6 province, is that of the Maritimes, New Brunswick, Nova
7 Scotia and Prince Edward Island. None of the other
8 provinces do have that, and in one way or the other ---

9 THE COMMISSIONER: What right of appeal
10 do they have in those provinces?

11 MR. BURNETT: It is worded a little
12 differently in each one, of course, but fundamentally it
13 is a right of appeal to the Court of Appeal. One
14 province provides for leave of the Court of Appeal.

15 THE COMMISSIONER: On question of law?

16 MR. BURNETT: On question of law and
17 jurisdiction, that is all. We are not suggesting it
18 should go beyond that.

19 THE COMMISSIONER: That is available in
20 Prince Edward Island and Nova Scotia?

21 MR. BURNETT: And New Brunswick.

22 The section of the Act with which we
23 are concerned, of course, is Section 72.

24 THE COMMISSIONER: Section 72?

25 MR. BURNETT: Yes. I will not read it,
26 but it puts it this way, it restrains appeals and really
27 says that the Board shall not be upset on appeal or
28 otherwise. We are, I think, very conscious of the fact
29 and desirability that the procedure before the Board
30 be as simple and expeditious as possible, consistent



1 always of course, with justice on all sides. It may
2 very well be that if one adopted trial procedure in
3 cases of fact it might achieve a better result in each
4 instance, but I venture to express a doubt on that
5 question of fact when we have an experienced impartial
6 board which over the years have trained themselves or
7 been trained to sort out issues of fact and perhaps to a
8 degree, Mr. Commissioner, untrammelled by some of the
9 rules of evidence that would be reached in the courts.
10 So that even if it is arguable that the trial of any
11 future claim for compensation could be more thoroughly
12 sorted out and decided by procedure more akin to our
13 civil trials, I am by no means recommending that because
14 I think that in doing so we burden the whole procedure
15 with delay and expense. Nothing has ever been brought to
16 my attention to indicate any inadequacy on the part of
17 the Board to deal promptly and efficiently with questions
18 of fact. But one thing we can't help but be conscious
19 of, I feel sure the Board is equally conscious of this
20 point, and that is that no matter how many adjustments,
21 how many levels of appeal it may have internally --- I
22 believe there are now four methods of hearing ---- three
23 of which we call appeals, but they are all internal,
24 that in essence the Board ---- and I use that term very
25 broadly ---- is the Board and its officers are really its
26 own judge, jury and court of appeal. They decide at
27 different levels whether what some other officer of the
28 Board or perhaps even the same officer did was correct.

29 I think fundamentally, as I say, on
30 questions of fact we certainly have no criticism, but



1 when you come to questions of law again I think we have
2 to recognize that the Board is not fundamentally a Board
3 qualified in a legal sense, that is with legal knowledge,
4 that is not the essence of the members of the Board.
5 They certainly have available to them qualified legal
6 opinion, yes, but the Board itself is not so constituted
7 as itself to be fully adequate to rule on questions of
8 law. Therefore, it is our submission that we can have
9 a case where the Board does through matters of policy
10 or reasons of policy or otherwise evolve new points of
11 law different from that which we encounter elsewhere
12 in our lives and perhaps be their own judge of whether
13 they are acting within or without the jurisdiction given
14 them by the Act. Basically, it seems to me that that
15 is not good. I don't conceive that there would be very
16 many appeals ---- if I may use that expression ---- and
17 I also conceive that the Board itself might like to see
18 a path by which matters could be referred to the courts
19 for a decision on points of law and jurisdiction, but I
20 do believe that on questions of law there should be an
21 outside authority and I have selected the Court of
22 Appeal. There is nothing sacrosanct in that section,
23 but I notice the other provinces have selected the
24 Courts of Appeal of the provinces, to act upon all
25 points of law which might be brought to them, either
26 spontaneously by the Board or by one of the parties to
27 any case.

28 The question as to the procedure, in
29 the brief that we filed we did set forth in an appendix
30 a suggested amendment --- it is not an amendment, it is



1 really a new section. It corresponds in some ways with
2 those found in the Maritime Provinces. However, I have
3 given some considerable thought to this in association
4 with other people represented in this brief and
5 considering the character of the hearings before the
6 Board, the evidence that we end up with, it seems to me
7 that rather than have what I might call the usual appeal
8 where you have a record and the appeal based on that
9 record which may be very feasible in a trial or after a
10 trial where all the facts are there and given in
11 evidence, this does not necessarily apply in connection
12 with Board hearings where the source of a decision is
13 perhaps only partly given in evidence or documents that
14 they refer to, medical reports. The sum of what I have
15 just been saying is that the better method is that which
16 seems to have been adopted in New Brunswick where the
17 procedure to appeal is by way of what is generally known
18 as a stated case. The Board may do it or the party may
19 do it. In the event that it is a party, the thought is
20 that the party should ask the Board to state a case,
21 that is, the facts upon which they relied in coming to
22 a certain conclusion which the party in question has
23 thought was probably wrong. This enables the matter to
24 go before a court or judge, whatever form you adopt for
25 appeal, in a concise manner because I am still very
26 conscious of the fact that I do not think that we want
27 to turn appeals into lengthy matters. We want them to be
28 concise. If there be a point of law or point of
29 jurisdiction to be decided, I think it should be referred
30 to in as concise a manner as possible to a court and



1 that point decided. We don't want long, drawn-out trials
2 or appeals, and by this method I believe that we can
3 have the legal use of the Board or whatever jurisdiction
4 is decided strictly by an outside, independent body and
5 on the question of jurisdiction and of law I can think
6 of no more able body than a judge of the Supreme Court
7 of Ontario or the Court of Appeal of Ontario. I do not
8 even try to lay down any lines as to how many there
9 should be from the Court of Appeal or not. All I do say
10 is that other provinces have adopted the Court of Appeal.
11 I have some question in my mind as to whether there
12 are not some questions which can be dealt with at
13 least in the first instance by a single judge. We are
14 looking for a quick disposal of legal issues.

15 If that finds favour, and as I say,
16 there will not be, I don't think, too many issues ever
17 brought to appeal --- but I think the right should be
18 there to have some outside body looking at the decisions
19 of the Board on points of law and jurisdiction, so that
20 it may be kept in harmony with the laws of the province
21 generally, I respectfully submit that we should not
22 have a body of legal principles what you might call
23 Workmen's Compensation law in our body of general law.
24 If it should be that a certain principle of law which
25 we encounter in our daily lives should be changed when
26 it is found in compensation law, then I think that the
27 matter should be one for the Legislature. If the
28 Legislature wants to adopt a certain principle of law,
29 then it should be contained in the Act and not left to
30 the --- the word "whim" is not fair --- not left to the



1 Board.

2 THE COMMISSIONER: It might help if
3 you gave an example of a question of law.

4 MR. BURNETT: I think one of the points
5 that are bound to arise --- it has arisen four or five
6 times --- are questions of, **whether**"in the course of
7 employment". That is, of course, a mixed question of law
8 and fact. There are points of law arise there, but if
9 the man was engaged in the course of employment at the
10 time, insofar as questions of fact are concerned, that
11 should be for the Board, but if there are any questions
12 of law that decision ---

13 THE COMMISSIONER: That is all that I
14 have been wondering as you have been speaking. How many
15 matters are there other than questions of fact that are
16 going to arise?

17 MR. BURNETT: I would think there are
18 from time to time questions of law; **what** is the meaning
19 of a certain thing in an Act, whether ~~that~~ person is or
20 is not included in the Act or whether that industry is
21 included. These may harbour questions of law.

22 THE COMMISSIONER: It may be a question
23 of fact whether he is employed there or whether he isn't.

24 MR. BURNETT: I quite concur there.
25 There is a large body of fact in this also.

26 THE COMMISSIONER: It has been there a
27 long time, Mr. Burnett. We have gone since 1913 without
28 any real complaints up to this time.

29 MR. BURNETT: I should in all fairness
30 add that Mr. Justice Roach in a previous Commission did



1 not feel it was necessary; I want to add that in all
2 fairness, but it does not keep me from thinking and
3 bringing it forward that it should be there. I think I
4 should also say that it was not adopted in British
5 Columbia. They had a recent Royal Commission out there.

6 THE COMMISSIONER: I am sorry, I didn't
7 hear that.

8 MR. BURNETT: It was not adopted in
9 British Columbia.

10 THE COMMISSIONER: It was not?

11 MR. BURNETT: It was not. I want to put
12 it on a fair level, but I do feel that there is a great
13 need for an outside body to pass on these points and if
14 that is so, then there will have to be a revision of
15 Section 72 to provide for this. I would suggest that
16 very much the same can be followed as is done in New
17 Brunswick, merely make the exception on points of law
18 and jurisdiction.

19 I don't think there is a great deal
20 more I may say on that point, but there is, I might say,
21 a collateral point which has to do, I think probably
22 it could be left with other matters of appeals. The
23 other point has to do with the reasons for the Board's
24 decision. It probably applies better in Section 2 of
25 the brief we have.

26 I think I mentioned at this point, but
27 my learned friend Mr. ~~Butterill~~ has suggested that the Board
28 itself may wish to have this provision in the Act.

29 THE COMMISSIONER: Well, we will hear
30 from someone on the Board. It might well be.



1 MR. ESTEY: While Mr. Burnett is here
2 it might be helpful to get his ideas on one or two
3 things which are suggested by his remarks this morning.

4 One of them is, I take it, that we have
5 in your proposed Schedule B something which is not very
6 far afield from your own provisions in The Railway Act
7 in connection with appeals from the Board of Transport
8 Commissioners, and I take it you think that general
9 procedure might be helpful here.

10 MR. BURNETT: I think it would be
11 equally helpful. My mind was not directed to The Railway
12 Act, but it also exists there on the question of law.

13 MR. ESTEY: One reason I refer you to
14 that is that there is some considerable discussion in
15 the Supreme Court of Canada as to why one needs to say
16 the appeal will be on both questions of jurisdiction and
17 of law since the question of jurisdiction is a question
18 of law, and I wondered if you had some reason for putting
19 that in there.

20 MR. BURNETT: Because it has been in
21 others. It is consistency in expression.

22 MR. ESTEY: You just don't want to depart
23 from the wording which is available and has been
24 determined elsewhere.

25 MR. BURNETT: It has been determined
26 elsewhere.

27 MR. ESTEY: Then, in your Schedule C
28 you refer to the appeal lying from the Board to the
29 Court of Appeal upon leave within one month after the
30 decision of the Board that you are appealing from.



1 I just wanted to be sure that I got your ideas this
2 morning that that does not limit the appellant to stating
3 a case the way that is drafted. In the ordinary sense
4 of the word stating a case is just an ordinary right of
5 appeal. That is what you meant.

6 MR. BURNETT: Right. I think I
7 mentioned that I had given some thought to this appeal,
8 but it strikes me that what we have here is a usual,
9 just a simple provision for appeal so the whole record
10 would be open to the court and I have had some thoughts
11 on that that the better method would be the simpler one
12 of having merely a stated case, whatever points the
13 appellant wishes the Board to state, so to that extent
14 I think that the proposal as shown in Section C should
15 be qualified to be more in accord with what we find in
16 Section 32 of the New Brunswick Act, which is much the
17 same thing, but provides for the whole matter of a
18 stated case procedure. Having in mind what we want to
19 achieve here, I think that is the simplest method to
20 decide it.

21 MR. ESTEY: I was going to suggest
22 that if you had any further facts on that you might let
23 us have a revised Section 1 if you would.

24 MR. BURNETT: I would be very happy to,
25 yes.

26 THE COMMISSIONER: It would seem
27 reasonable if any consideration were given to your
28 submission that it be held as a stated case because
29 otherwise I think it would be much longer and much more
30 expensive and might succeed in bringing in all the



1 evidence that was heard before the Board.

2 MR. ESTEY: One thing which these rights
3 of appeal always raise, Mr. Burnett, which I am sure you
4 are more familiar with than I am is the question of who
5 is the party to the appeal. A parallel case might be
6 the Ontario Labour Relations Board. Do you envisage the
7 Workmen's Compensation Board being a party to the appeal?

8 MR. BURNETT: Yes, I think you would have
9 to have them as a party to the appeal.

10 MR. ESTEY: They would be in the
11 position of having to justify their decision in one
12 respect, but I suppose you don't see any evil flowing
13 from that.

14 MR. BURNETT: No.

15 THE COMMISSIONER: In appeals from the
16 Railway Board the Railway Board is not a party to the
17 appeal, is it?

18 MR. ESTEY: No. But the Labour Board
19 generally is. It seems in the provincial field the
20 Boards feel they should appear because they are not
21 judicial bodies and in the Railway Act the Board is
22 described as being a court, and I think that is the
23 difference.

24 MR. BURNETT: That is the difference as I
25 see it.

26 MR. ESTEY: Mr. Guthrie just directs my
27 mind to something else which is very germane to your
28 submissions. What is your view on a question of mixed
29 law and fact? Is that a question of law, do you think,
30 for the question of Workmen's Compensation? You may



1 remember years ago that was in the Railway Act and they
2 took it out.

3 MR. BURNETT: I think that problem can
4 be surmounted by the system of a stated case, for one
5 thing. The Commissioner has mentioned some of the
6 points and another aspect is that it can be reduced down
7 in the cloudy area.

8 MR. ESTEY: I just have one other
9 question to put to you to see what your views are on it.
10 Will the Court of Appeal award costs in the ordinary
11 practice, or would you make a special provision, do you
12 think, to do away with costs or limit them, or what do
13 you think?

14 MR. BURNETT: I have not given that too
15 much thought, frankly, but my reaction is that costs
16 should not be allowed in cases of this type for the
17 party. I have no strong views on that.

18 THE COMMISSIONER: It might not bother
19 the corporate appellant, but it might bother the
20 individual.

21 MR. BURNETT: Well, of course, it
22 could bother them both ways, my lord. If he lost, he
23 would not have to pay costs.

24 MR. ESTEY: Of course, you lose the value
25 of deterrent if there is a deterrent factor in costs.
26 You lose that by taking it out. I suppose that is the
27 lesser of the two evils.

28 MR. BURNETT: I think probably you
29 have touched on the very point that I think is important.
30 Assuming that the employer is better able to appeal



1 than the employee, I would not like to see the deterrent
2 of costs be raised up against the employee for taking an
3 appeal.

4 MR. ESTEY: Just one other question
5 which comes to mind from your submission, Mr. Burnett,
6 and that is that the Board, as you say, is its own judge,
7 jury and court of appeal. Their current policy since
8 March, 1965, in any case, is that they apparently don't
9 have anyone hearing appeals from themselves and I am
10 wondering if you may or may not have been aware of that
11 and if that has any bearing on what you have submitted,
12 and, secondly, do you think that when you have your
13 safeguard of an appeal by way of a stated case that
14 your Association thinks that there is still the need for
15 four levels of appeal prior to the stating of the case.

16 MR. BURNETT: We didn't put anything
17 in the brief on that point, but I know we gave some
18 thought to it. I think we thought that there were too
19 many levels of appeal.

20 THE COMMISSIONER: You think there are
21 too many?

22 MR. BURNETT: Yes, I think the first
23 level, I think it is the review committee, could be
24 eliminated. I think that was the new one which was
25 added.

26 THE COMMISSIONER: Perhaps we are going
27 to deal with that later.

28 MR. BURNETT: That is another point here.

29 MR. ESTEY: I take it your other comment
30 on page 9 of your brief dealing with reasons for decision



1 follows naturally from your Schedule B that you have to
2 have reasons from the Board in order to appeal from it.

3 MR. BURNETT: I was wondering if it
4 should come in now or come in later. There is a thought
5 here we have expressed that we should have reasons.
6 That becomes perhaps less important ---

7 THE COMMISSIONER: Don't you get
8 reasons from the Board?

9 MR. BURNETT: I think you may or may not
10 get reasons from the Board, put it that way.

11 MR. ESTEY: Certainly if you do and if
12 there is going to be an appeal the reasons might be
13 better.

14 THE COMMISSIONER: Well, you get
15 reasons on the intermediate levels. You get reasons
16 from the review and from the appeal board.

17 MR. BURNETT: I don't think, sir, that
18 you could say that fundamentally you get reasons from
19 the Board. You get them in the end result, yes. That
20 is another point.

21 On one point you mentioned there
22 about the Board having been using an outside appeal on
23 questions of law that I think does not get away from
24 the fact that that outside body is still not, shall I
25 say, qualified on questions of law. I would think there
26 are some incipient objections that I have heard even on
27 questions of fact that the Board is too much its own
28 judge and jury, but having this outside access, even if
29 not to a court, some questions of fact are put up to
30 independent persons and even to that extent I think it



1 is a good thing, but that does not much answer my point.

2 MR. ESTEY: Thank you very much, Mr.
3 Burnett.

4 Mr. Chairman, dealing with this right
5 of appeal we have the brief of the Board of Trade of
6 Metropolitan Toronto.

7 MR. O'CONNOR: My name is T. G. O'Connor,
8 Mr. Commissioner. I am Legal Secretary of the Board of
9 Trade of Metropolitan Toronto. The brief does deal, on
10 pages 1 and 2 and 3 respecting appeal procedure. I don't
11 know if it is your wish, Mr. Commissioner, that I read
12 from the brief. I believe I could summarize some points
13 raised in the brief. First, the question of appeals on
14 questions of law to the courts. We point out in the
15 brief a statement made by Mr. Rowntree, the Honourable Mr.
16 Rowntree, the Minister of Labour on June 20th of this
17 year, wherein he said that the object of the Workmen's
18 Compensation Board is to reduce and not increase the
19 legalism of the decision-making machinery. The Toronto
20 Board of Trade agrees wholeheartedly with that statement
21 as it applies to a workman's claim.

22 However, Mr. Commissioner, I should
23 point out that we believe in the avoidance of legalism
24 in order that the processing of the workman's claim
25 should be as expeditious as may be in keeping with the
26 trust inherent in the administration of the Workmen's
27 Compensation Fund.

28 However, Mr. Commissioner, we do not
29 see any sufficient reason for the avoidance of legalism
30 in a contested assessment based on a dispute about the



1 classification of an employer. It is our information
2 that honest differences of opinion do occur in this area.

3 THE COMMISSIONER: There is nothing in
4 the Act to specify how the Board must classify, is there?

5 MR. O'CONNOR: I think it is at the
6 complete discretion of the Board.

7 THE COMMISSIONER: Do you wish to make
8 that into an appeal on a question of law or a separate
9 appeal on the question of classification only?

10 MR. O'CONNOR: If I may, I might read
11 from the brief. We touch on that. We say where these
12 disputes, that is, classification disputes, turn on a
13 question of law or on a mixed question of law and fact
14 it is submitted that the employer should have the
15 right of appeal to the courts.

16 THE COMMISSIONER: The question of law
17 could arise in connection with the classification.

18 MR. O'CONNOR: We submit, Mr.
19 Commissioner, that whether or not an employer can be
20 classified as carrying on a particular kind of
21 manufacturing operation, we submit this is akin to
22 status.

23 THE COMMISSIONER: That is a question of
24 fact, isn't it?

25 MR. O'CONNOR: We submit, Mr.
26 Commissioner, if it is akin to status, then you are
27 dealing with a question of law. It may be that what
28 is the subject matter of the dispute does involve both
29 fact and law and is intermixed together, interlaced.
30 That is what we have to say on the question of appeals



1 on questions of law to the courts. I don't know if you
2 wish me to proceed with the appeal structure within the
3 Board.

4 THE COMMISSIONER: Well, whatever
5 counsel says. Do you wish to hear the rest?

6 MR. ESTEY: Some overlap. Perhaps it
7 might be more convenient for Mr. O'Connor rather than
8 bring him back.

9 THE COMMISSIONER: Perhaps we should
10 give Mr. Burnett the same opportunity. I suppose there
11 is no particular reason why we could not hear ^{it} while some-
12 body is giving evidence on all these points.

13 Perhaps Mr. Burnett could be heard
14 again on those points too.

15 MR. O'CONNOR: The three levels of
16 administrative appeal now in effect ensure that
17 a workman's claim cannot be dealt with peremptorily
18 without redress. It is essential, however, that there
19 not be so many appeals, that the appeal machinery becomes
20 bogged down by sheer numbers. In an industrial province
21 like Ontario such a possibility must be acknowledged.
22 The recently introduced review committee before which
23 there is no viva voce hearing will, it is hoped, avoid
24 the problem of too many appeals.

25 THE COMMISSIONER: Just a minute, where
26 are you on this?

27 MR. O'CONNOR: The first full paragraph
28 on page 2.

29 THE COMMISSIONER: Yes, all right, go
30 ahead.



1 MR. O'CONNOR: It is our opinion, Mr.
2 Commissioner, that an impartial review by this committee
3 of a claims officer's decision curtails or will have the
4 effect of curtailing the significance of appeals without
5 in any way derogating from the right of appeal of a
6 hearing. Implicit there, Mr. Commissioner, we are stating
7 that if the claimant is not satisfied with the decision
8 of the review committee he has the right to then go to
9 the appeal tribunal where he can be given a hearing and
10 if he is not satisfied with the decision of the appeal
11 tribunal, he can then go to the Workmen's Compensation
12 Board.

13 We submit that that is ample opportunity
14 for the claimant's case to be heard and heard with full
15 opportunity for him to express his claim in the way that
16 he sees fit. We do believe that the function being
17 served by the review committee is one that should be
18 maintained in that as we understand it it is completely
19 separate from the claims department area, that this is
20 calculated to ensure that when the committee reviews the
21 claim officer's decision which I understand will be done
22 upon request by the claimant if the claims officer has
23 turned him down, that such a review will be an impartial
24 review and the claimant, knowing that, and if the review
25 committee turns him down again, then the likelihood is
26 that the claim should have been turned down and that this
27 will impress upon his mind that there has been an impartial
28 examination and investigation and that he will be foolish
29 to carry on the appeal unless he sincerely believes that
30 he has a good claim. That is our submission respecting



1 the appeal structure.

2 THE COMMISSIONER: In other words, your
3 members approve of the appeal structure as it stands at
4 the moment?

5 MR. O'CONNOR: That is right, Mr.
6 Commissioner..

7 Now, I deal finally with access to
8 Board records. We touch upon this subject in the
9 following way. We do take objection to the present
10 practice of the Workmen's Compensation Board, so we are
11 informed, not being prepared to accept the transcript
12 of evidence given before the appeal tribunal.

13 THE COMMISSIONER: I just want to follow
14 you. There is a transcript of evidence taken before the
15 appeal tribunal and if there is an appeal to the Board
16 itself, the evidence has to be re-heard?

17 MR. O'CONNOR: That is my understanding,
18 Mr. Commissioner.

19 THE COMMISSIONER: Is that correct, Mr.
20 Kerr?

21 MR. KERR: It is a completely fresh
22 review, Mr. Commissioner, when it reaches the Board
23 level.

24 MR. O'CONNOR: It is like a trial de
25 novo. We believe that the transcript of the evidence
26 given before the appeal tribunal should be allowed to be
27 brought to the **attention** of the Workmen's Compensation
28 Board. Moreover, we believe that all of the evidence
29 upon which the appeal tribunal based its decision should
30 be known to the parties interested. In particular we



1 believe that medical reports should be published in full,
2 rather than by way of summary as they are now.

3 It has been said that publication in
4 full of a medical report prepared by the claimant's
5 doctor would reduce their frankness and if not reduced
6 in frankness, render the doctor susceptible to a libel
7 action. In our opinion to accept the arguments that
8 medical reports would be reduced in frankness is to
9 confess a lack of confidence in the professional
10 integrity of doctors. The Toronto Board of Trade does
11 not admit any such lack.

12 As to the argument that full publication
13 of medical reports might render doctors susceptible to
14 libel action ---

15 THE COMMISSIONER: I don't think that
16 argument is seriously advanced, is it?

17 MR. O'CONNOR: We simply state that
18 in our belief such reports would be made on the occasion
19 if qualified total disability exists.

20 THE COMMISSIONER: As I understand it,
21 non-disclosure is not a case for a libel action, but it
22 is thought, and I would think that there is something to
23 that if a doctor is practising in a small town where
24 there are one or two small industries and he makes an
25 adverse report on one of his patients to the Workmen's
26 Compensation Board the results would be that it would not
27 be very long before he would be rather unpopular and it
28 might affect his frankness, and while there are doctors
29 that probably would not be influenced in that way, I am
30 afraid there might be many that would. I understand that



1 is the reason, anyway, Mr. O'Connor. You have already set
2 it out.

3 MR. O'CONNOR: I have dealt with it.

4 Those are our submissions in respect of
5 the appeal procedure.

6 MR. ESTEY: Mr. O'Connor, I want to be
7 clear about this question of your acceptance of the
8 present Board of Appeal structure. Do I understand you
9 to say that you are now content with that structure
10 subject only to that one modification that the
11 Workmen's Compensation Board itself when it hears a
12 case should start with the transcript taken before the
13 appeal tribunal?

14 MR. O'CONNOR: Yes, you are quite correct,
15 except that we believe that the transcript should be
16 available to the interested parties to be used before
17 the Workmen's Compensation Board. I am thinking
18 particularly of perhaps evidence given by a claimant
19 before an appeal tribunal. He then gives evidence before
20 the Workmen's Compensation Board and his evidence
21 contradicts some important points given before the
22 appeal tribunal. We believe it should be open to the
23 other parties to examine him. They can't cross-examine,
24 as I understand it, before the Workmen's Compensation
25 Board.

26 MR. ESTEY: That is what I want to get
27 at. Is that what you are proposing?

28 MR. O'CONNOR: No, but we would draw it
29 to the attention of the Workmen's Compensation Board that
30 the person had contradicted himself or had said something



1 differently before the Workmen's Compensation Board than
2 what he said before the appeal tribunal.

3 MR. ESTEY: I take it you are not
4 proposing, and you might say why you are not, any right
5 to examine the witness on this discrepancy.

6 MR. O'CONNOR: I don't have any
7 instructions on that point, but I believe it is thought
8 that the claimant in most cases has initiated the
9 appeal. It may be that the fear of cross-examination
10 would inhibit his intention of initiating an appeal.

11 MR. ESTEY: Then just to be clear on it,
12 you are not suggesting that the Workmen's Compensation
13 Board act only on this record taken before the appeal
14 tribunal, that it be a trial de novo, but that the parties
15 have the earlier record available to them?

16 MR. O'CONNOR: That is right.

17 MR. ESTEY: And it is not now available?

18 MR. O'CONNOR: That is my understanding.

19 MR. ESTEY: Then do you have any views
20 that you are instructed to put forward as to whether or
21 not there should be an appeal from the Board itself in
22 the general nature of that described by Mr. Burnett on
23 behalf of the railways today?

24 MR. O'CONNOR: I think Mr. Burnett and
25 I are on opposite sides of the fence on that one.
26 With respect to the workman's claim, we do not advocate
27 the right of appeal to the court on either a question of
28 law or a question of fact.

29 MR. ESTEY: Before I get then to your
30 other question where you do say there is a right of



1 appeal, what is your view as to who the parties should be
2 to the appeals inside the Board?

3 MR. O'CONNOR: Well, the two most
4 interested parties would be, of course, the employer and
5 the employee and each one, as I understand it, is quite
6 entitled to retain counsel if he sees fit. I think the
7 adversary process is the best way that I can think of to
8 have the problem settled. I appreciate that the
9 adversary process would appear to involve cross-
10 examination.

11 THE COMMISSIONER: I suppose in most of
12 the cases that come before the Board at the appeal level
13 that the industry is not represented at all, probably.
14 It is a Board decision and the man is appealing it or his
15 representatives are and because of the fact that it is a
16 class operation as far as industry is concerned nobody
17 probably appears at all. Am I correct in that, Mr. Kerr?

18 MR. KERR: Mr. Commissioner, all parties
19 are advised and quite frequently a representative of the
20 employer will attend the hearing while the hearing is
21 being held and transcripts are available to the employer.

22 THE COMMISSIONER: I just wanted some
23 information on that.

24 MR. ESTEY: I take it in line with your
25 idea when you get to the top level of appeal that you
26 should have the record of the second from the top
27 available, that you feel that in the lower level of
28 appeal that both parties should have the full file of the
29 Board available so that they will know what the issues
30 were before the review committee. I am reading that into



1 what you say. I may not be right. Have you any remarks
2 on that?

3 MR. O'CONNOR: You mean at the time the
4 review committee is carrying on ----

5 MR. ESTEY: After the review committee.
6 When you appeal to an appeal tribunal the workman is
7 given a summary of the file. Is it your view that the
8 summary is adequate or inadequate?

9 MR. O'CONNOR: I would suggest that the
10 parties concerned should have not only the summary, but
11 full copies of what is contained in the file.

12 MR. ESTEY: That is anybody who is
13 interested in appearing before the appeal tribunal should
14 have full access to everything that the review committee
15 had access to?

16 MR. O'CONNOR: If that person does in
17 fact have an interest in the appeal at hand.

18 MR. ESTEY: Still dealing with this
19 question of the structure of appeal inside the Board,
20 does the Board of Trade believe --- and I base this on
21 something you said --- does the Board of Trade believe
22 that the appeal, if that is the right word, from the
23 initial assessment of the situation by the claims
24 officer to the review committee should be automatic in
25 the case of a denial of the workman's claim?

26 MR. O'CONNOR: Yes.

27 MR. ESTEY: It should be automatic?

28 MR. O'CONNOR: It should be automatic.

29 MR. ESTEY: Then it would carry on
30 without any notice to the workman therefore, at that



1 stage, had he been refused his claim.

2 MR. O'CONNOR: Well, I don't think we
3 have any views one way or the other. First as an
4 observation I think the workman should be kept in touch
5 with what is happening. As I understand the present
6 procedure is that he is advised of the decision of the
7 claims officer and if it is turned down, so to speak,
8 he is then told that he can appeal to the review
9 committee and if he does not launch an appeal at that
10 stage I believe he is out of luck. We would have no
11 objection to it being automatic. I believe that was
12 the case ---

13 MR. ESTEY: Yes, before March, 1965
14 when the workman, I don't believe, knew that he had been
15 turned down by the initial officer's review.

16 MR. O'CONNOR: I see no harm in letting
17 him know what is going on.

18 MR. ESTEY: It might add an element of
19 suspense to his claim if he knows it is going to be
20 turned down.

21 Then, one last line of questions I
22 would like to get your ideas on, Mr. O'Connor because we
23 are dealing with it a topic at a time: You referred to
24 the libel aspect of the doctor's report and I take it
25 your reference there is to what is in the Ontario Medical
26 Association brief which amounts to a request that if
27 these reports are not privileged they should be made
28 privileged.

29 MR. O'CONNOR: We say that in our brief.
30 We believe that these reports are made or published under



1 an occasional qualified privilege and it would take
2 malice before a person would be liable. On the other
3 hand, we do appreciate that there is this possibility
4 and that if they be published in full consideration be
5 given to making these medical reports absolutely
6 privileged.

7 MR. ESTEY: Give them statutory
8 protection?

9 MR. O'CONNOR: Statutory protection.

10 MR. ESTEY: Do you have any comments
11 about the other consequences to the revelation of the
12 doctor's report which his lordship adverted to a moment
13 ago, namely, that by making them public, by broadcasting
14 them, that you tend to inhibit what the doctor might
15 ordinarily say to the Board in making his report?

16 MR. O'CONNOR: Well, we touch upon that
17 by way of acknowledging the argument that they may be
18 reduced in frankness. Our opinion is from a general
19 point of view medical doctors are possessed of
20 professional integrity and to admit that the overall
21 effect would be a reduction of frankness is an admission
22 of lack of confidence in the professional integrity of
23 the medical doctor.

24 We are prepared to accept --- generally
25 speaking, there will be the odd case --- generally
26 speaking, medical reports will not be reduced in
27 frankness even though they are subject to full publication.

28 MR. ESTEY: Thank you, Mr. O'Connor.

29 Mr. Burnett, you may or may not have
30 something to add in the light of that.



1 MR. BURNETT: Only upon the medical
2 reports. It is our submission that medical reports in
3 their entirety should be made available to doctors of
4 the injured party or the employer. And to adopt in
5 effect the Quebec provisions to this effect.

6 THE COMMISSIONER: Be made available
7 to doctors, but not to the representative of the man.

8 MR. BURNETT: The doctor of a man and
9 to the medical advisor of the employer.

10 MR. ESTEY: You say that is referred to,
11 Mr. Burnett --- oh, yes, page 7, paragraph numbered 1.
12 You say:

13 "Knowledge of the contents of
14 medical reports in possession
15 of the Board is essential to a
16 prompt and sound assessment of
17 injury, the matter of compensation,
18 the question of medical aid and
19 the most beneficial method of
20 rehabilitation."

21 "It is recommended that the Act be
22 amended by adding a section thereto
23 similar to that which appears as
24 Section 50 of the Quebec Act",
25 which gives a qualified privilege to the doctor.
26
27
28
29
30



1 MR. BURNETT: I think it is essential
2 that medical advisors of both employer and employee
3 should have full knowledge of medical reports affecting
4 the case, and they should not be limited to summaries
5 of what someone else thinks.

6 I know the medical profession appears
7 to think that this would jeopardize them in their own
8 communities, but that is difficult to conceive that
9 they would be affected by it. I share the views of the
10 last speaker from the Board of Trade on that point, but
11 I think the important thing is that if these are made
12 available to the doctors of both the employer and the
13 employee then each one knows the entire medical picture
14 that is going to be dealt with.

15 MR. ESTEY: It seems to me that that
16 is an impractical provision and that really what it
17 should say is that if it is going to be made available
18 it be made available to the workman and the employer.
19 I don't suppose you quarrel about the wording of it.

20 MR. BURNETT: No, not particularly.

21 THE COMMISSIONER: It seems to me that
22 that is the case too, Mr. Burnett. It is there for the
23 purpose of the appeal and on the appeal it is going to
24 be argued and if it is in question there is going to be
25 a reference to the report of the doctor in the first
26 place and to say it is available to doctors alone ---

27 MR. BURNETT: It would certainly become
28 used on appeals, yes, but if it is originally requested on
29 making a report on the file of the Board it would be sent
30 to the doctor, not to the man or some person



1 representing the employee.

2 THE COMMISSIONER: There is no concern
3 about the medical report through the Board as far as I
4 understand, through its doctors on review or something
5 of this sort. The concern is about the report to the
6 Board by the doctor who looked after the man in the
7 first place.

8 MR. BURNETT: Which is, after all, the
9 basic report, isn't it?

10 THE COMMISSIONER: He might be
11 representing the man at that point or he might not.

12 MR. BURNETT: Well, I think he is the
13 doctor who was originally consulted.

14 MR. ESTEY: I take it the main point is
15 that the medical report should be made available in full
16 prior to the hearing at which the man's rights are
17 ultimately going to be disposed of and the mechanics of
18 how that is done, to your mind, is not so important.

19 MR. BURNETT: That is right. There is
20 one side issue of this. As you know, out of some
21 compensation claims there develop third-party cases,
22 and it is then essential wheresubrogation is an attempt
23 by an employer against a third party that these medical
24 reports be available. Now, so far there has been some
25 question of whether there would be or would not be.
26 This would clear that also.

27 THE COMMISSIONER: In third-party
28 proceedings you could not have made available the medical
29 reports of the defendant in the courts, could you?

30 MR. BURNETT: Actually third-party



1 proceedings would be where the employer or the Board is
2 claiming against a third party. And he would use the
3 medical reports of the plaintiff.

4 MR. ESTEY: As though he had hired them
5 and arranged for them himself?

6 MR. BURNETT: Yes.

7 THE COMMISSIONER: Do you have
8 difficulties in hearing them under those circumstances?

9 MR. BURNETT: It varies. That is what I
10 want to get away from, an absolute right to have these
11 reports. My experience has been very decent with them.
12 I have not had much trouble so far.

13 THE COMMISSIONER: I think probably you
14 are acting almost as the Board would be acting for
15 itself in the case of people of the first part and I
16 would assume they would give you all relevant information
17 to help you.

18 MR. BURNETT: I have never had trouble
19 personally, but I am instructed that other people have
20 had. I think the right should be there to have them.
21 I don't think it should have to be a case of having to
22 convince the Board to let you have them. I think you
23 should be allowed to have them in a subjugation
24 proceeding.

25 MR. ESTEY: Thank you, Mr. Burnett.

26 Mr. O'Connor, there is one point I
27 would like to ask you while you are here. We would like
28 to have you say something further on one point, and that
29 is this assessment appeal --- whether or not it is a
30 question of status or whether it is a question of law or a



1 mixed question of law and fact --- you don't have any
2 views, you simply want the right to have that appeal?

3 MR. O'CONNOR: Yes.

4 MR. ESTEY: And that appeal you think
5 should be heard in the Court of Appeal?

6 MR. O'CONNOR: Yes. Of course, we are
7 getting right back to what you are trying to get away
8 from and that is it would seem to us that in many cases
9 a dispute respecting classification will turn upon a
10 question of law or a mixed question of fact and law.
11 I don't necessarily mean the Court of Appeal, Mr. Estey
12 --- a judge of the Supreme Court.

13 MR. ESTEY: That is why I brought you
14 back, I wanted to get your ideas on that.

15 MR. O'CONNOR: We have no idea one way
16 or the other.

17 THE COMMISSIONER: At the moment you have
18 no appeal from classification?

19 MR. O'CONNOR: That is my understanding,
20 Mr. Commissioner.

21 THE COMMISSIONER: I see your point.
22 Would you be satisfied on an appeal within the Board on a
23 question of classification similar to the appeal as to a
24 man's claim?

25 MR. O'CONNOR: This involves a dispute
26 with the Board and then you are asking the Board to
27 adjudicate the dispute which is rather anomalous.

28 THE COMMISSIONER: And the others, you
29 say, would not be disputes with the Board. I suppose
30 that all the Board is doing is acting as between the



1 claimant and industry so far as a claim is concerned, but
2 in this case you feel the Board is on one side and the
3 classified party is on the other?

4 MR. O'CONNOR: That is correct, Mr.
5 Commissioner.

6 THE COMMISSIONER: Well, we understand
7 your point.

8 MR. O'CONNOR: Thank you.

9 MR. ESTEY: The next brief in which
10 the topic schedule for today and the balance of this
11 week, if necessary, is the Construction Safety Association
12 of Ontario. Now, somebody spoke to me this morning on
13 behalf of them. I don't see that gentleman present.
14 Is anyone here on behalf of the Construction Safety
15 Association of Ontario?

16 THE COMMISSIONER: I suppose you will
17 read that in at the end then?

18 MR. ESTEY: Yes.

19 Then we have some submissions in
20 connection with the appeal procedure by the International
21 Railway Brotherhoods. Is there anyone here present for
22 that organization? If not, we will move along to the
23 International Nickel Company's brief which deals with
24 the appeal procedure.

25 MR. OSLER: Sir, I think as demonstrated
26 in this brief we have perhaps varied from the prior
27 discussion we heard this morning in that we feel that
28 although the claim appeal procedure in the present Act is
29 satisfactory, we feel there should be a distinct avoidance
30 of an adversary system if it is at all possible. We



1 consider that from the employer's point of view you can
2 be faced with an embarrassing and prejudicial situation
3 when you are attacking possibly a claimant and for that
4 reason we have suggested that it would be preferable that
5 the examination of witnesses, the carrying on of the
6 hearing before, say, the tribunal and the Board should
7 be by a solicitor of the Board itself rather than
8 representatives of the two parties examining witnesses.

9 Now, the only view that is just
10 insofar as the parties are concerned would be the right
11 to refer questions to this Board's solicitor which they
12 wished placed, and I understand with the present system
13 they do permit the parties to make oral or written
14 representations at the conclusion of the hearing. We
15 have taken no position insofar as appeals beyond the
16 Board are concerned.

17 THE COMMISSIONER: Somebody told me they
18 wanted to make representations to the Commission about
19 an Ombudsman to handle these references on behalf of the
20 claimant.

21 MR. OSLER: I would think the solicitor
22 employee of the Board ---

23 THE COMMISSIONER: I suppose the other
24 person would still be representing the claimant.

25 MR. OSLER: I think our basic
26 consideration is that you can in the situation where an
27 employer --- an employer can be in an embarrassing
28 position of attacking a claimant in order to adduce the
29 full facts of a thing. Surely the theory behind this is
30 not to produce, the whole Workmen's Compensation Act is



1 not to produce an adversary system. It is more of an
2 administrative tribunal.

3 THE COMMISSIONER: The trouble is, I
4 think, on quite a lot of these appeals, Mr. Osler, the
5 appeal is, under Schedule 2, there is a complaint made
6 in one or two of the submissions that the appeal is
7 being vigorously contested by the employer. Under those
8 circumstances the employer --- the decision by the Board
9 itself is one that the employer is disputing. Under
10 those circumstances I suppose the same thing applies to
11 the employee, though, doesn't it? But it is a Board
12 decision and under those circumstances there might be
13 objection to it, with all examination being in the hands
14 of the Board's lawyer. It is the Board's decision that
15 is being contested, isn't it?

16 MR. OSLER: That is quite true, sir,
17 but as I say, I think there should be a right among the
18 two parties, if I may put it that way, to put forward
19 questions, but you are not dealing with a direct
20 adversary system. I understand at the moment that the
21 practice has been not to permit a cross-examination.
22 Well, you are going halfway toward a true adversary
23 system. It seems that it would be better to completely
24 get away from it rather than to have, shall we say, what
25 might be a partial representation.

26 THE COMMISSIONER: You do not think
27 cross-examination is sufficient?

28 MR. OSLER: No, I think you still feel
29 that --- I don't know how to put it, it is not strictly
30 an independent person. It seems if you have an adversary



1 system the cross-examination and re-examination has been
2 a tried and tested way if you are going to do an
3 adversary proceeding. I think that if you are going to
4 get away from that, then you should go directly away from
5 it all the way, as I suggested a Board solicitor, a
6 Board counsel, an employee of the Board.

7 MR. ESTEY: You also suggest in the
8 brief that ~~we~~ somebody else has suggested in a brief
9 that we might adopt the system of an inquest where the
10 Crown Attorney puts the question and if somebody feels
11 strong enough about it they can go around and ask him
12 more questions. Perhaps that is what you have in mind.

13 MR. OSLER: Something along that line,
14 yes.

15 The other point upon which we have made
16 comment in our brief is in connection with the doctor-
17 patient relationship. I think perhaps, sir, you put to
18 a certain degree a finger on one of the problems in this
19 insofar as the smaller communities are concerned. The
20 relation between a physician and his patient should be
21 maintained in a confidential capacity, if at all possible.
22 We feel that a doctor should be able to if he wants to
23 give evidence before the Board without having to
24 completely open his evidence to all comers. In other
25 words, his evidence should be before the Board and the
26 Board's medical examiner ---

27 THE COMMISSIONER: Oddly enough, it is
28 the Ontario Medical Association, is it not, in their
29 briefs, who are the ones who suggest that this should
30 be published. However, your views perhaps are expressed



1 by many others.

2 MR. ESTEY: If you are finished on that
3 point could I ask you a question? As I understand the
4 average case a workman, when he is injured, goes to his
5 own doctor and the doctor fills out the report forms
6 which involve not only saying what the case is, but what
7 the history is, gives a time when he can return to work
8 and somewhere in the arrangement between the doctor and
9 the patient the doctor becomes a reporter to the Workmen's
10 Compensation Board, and then on occasion that man, the
11 workman, is referred to in other documents because the
12 Board thinks an orthopaedic man or somebody else should
13 take a hand in this. Now, there is your comment about the
14 exclusion of people while the doctor is giving his
15 testimony. If the doctor requests it does that apply equally
16 to the initial physician, the man's own physician?

17 MR. OSLER: Yes.

18 MR. ESTEY: Would you have any difficulty
19 in excluding the patient when the doctor he has gone to
20 gets up to explain his case? He is his own doctor.

21 MR. OSLER: That is true. I suppose
22 one could take exception if one wanted to. The feeling
23 has been that to the greatest extent possible the
24 broadcasting of a particular doctor's finding with
25 respect to his patient should be limited. Presumably if
26 the doctor is prepared to give full disclosure, some
27 doctors, I understand, would not be prepared to fully
28 disclose to a patient certain physical conditions purely
29 from the point of view of the patient's own welfare.
30 That I leave to the doctors. Certainly our comment in



1 this brief is really raised by our own company medical
2 people and talking from their point of view, their
3 consideration and experience is that it would be better
4 to have medical evidence, the doctor would be able to
5 give his evidence if he so requests, in other words, if
6 the situation arises and so far as his evidence is
7 concerned he feels that it should be given to the basic
8 minimum, then he should be able to make such a request.

9 THE COMMISSIONER: The view of a doctor
10 having to live in Sudbury might be different from
11 the view of a doctor living in Toronto.

12 MR. OSLER: I think that could be very
13 well true, sir. It is not only Sudbury, but I think from
14 the company's experience we have employees living in
15 Sturgeon Falls and in many smaller communities. Sudbury
16 is getting a size that it is perhaps quite not pertinent,
17 but there are many, many small communities, as you will
18 see in other parts of our brief where men travel many,
19 many miles.

20 MR. ESTEY: Mr. Osler, when a man is
21 injured in one of your mines in the Sudbury area is he
22 first attended upon by one of your company doctors?

23 MR. OSLER: We have not got today what
24 is known as company doctors. This was years ago in the
25 development stage, we did have, in fact, employee-
26 doctors. We do not have them now. An employee injured
27 at the mine will get first-aid treatment and then be
28 transported to medical facilities. You will note there is
29 one other comment in our brief that one of the problems
30 that has arisen in this respect is the confusion between



1 a transportation right in the Act and the initial choice
2 of doctor or the impression is that there is a man who
3 lives in Sturgeon Falls and he is injured and he says,
4 "Well, I want to be taken to my doctor at Sturgeon Falls"
5 This is a misunderstanding, I think. This is off the
6 point, though.

7 MR. ESTEY: Then, you have answered my
8 question, you don't have company doctors.

9 MR. OSLER: We have one doctor who is
10 in an advisory capacity as far as the company is
11 concerned. I believe he does consulting work, but there
12 is not a series of company doctors as such.

13 MR. ESTEY: What is your view on the
14 question which has already been discussed and you were
15 here, I notice, about whether or not the file should be
16 made available to the appellants in toto or whether
17 there should be a summary of that file including the
18 doctor's report prior to this appeal tribunal and prior
19 to the Board's disposition?

20 MR. OSLER: We have not dealt with that
21 subject specifically, as you will notice, and I am perhaps
22 talking more personally than I am on instructions, but
23 I would think we would approve the present practice of
24 not having full disclosure of the medical file.

25 MR. ESTEY: There is nothing in your
26 brief and I don't want to embarrass you by asking
27 questions upon which you have not been instructed and
28 you can dispose of the question by saying that if you
29 like, but I wondered if you had any view on Mr. O'Connor's
30 proposal about the appeal from the Board's assessment.



1 MR. OSLER: I have no instructions on
2 that. I have not discussed it. I have personal views,
3 but other than that I have certainly got nothing in the
4 way of instructions.

5 MR. ESTEY: Thank you.

6 THE COMMISSIONER: I think we might
7 adjourn long enough to have a smoke. I will make it ten
8 minutes, but I will start in ten minutes, so if you don't
9 mind coming in a moment or so before so we can start
10 without too much delay.

11
12 ---Short recess.

13
14 THE COMMISSIONER: Well, gentlemen, can
15 we resume, please.

16 This room has certain inadequacies.
17 We are not able to open any windows, but it is the best
18 we are able to do with one air conditioner. For that
19 reason I have a request that when we have an adjournment
20 in the morning that you smoke in the corridor and not in
21 this room because as things are at present it is almost
22 impossible.

23 MR. ESTEY: Mr. Chairman, on the appeals
24 procedure generally the next discussion is by the brief
25 of the International Union of Mine, Mill & Smelter
26 Workers dealing with the question of access to files.

27 Mr. Chairman, the comment has been
28 passed to me that it is much easier to follow this
29 procedure this morning by those who, while they
30 appear to be in the audience, are really participants if



1 the person appearing before the Commission would first
2 read from his brief that part of the brief which he is
3 going to discuss with the Commission, so that it won't
4 be necessary to have a copy of the brief to follow the
5 discussion, so if you would do that we will be obliged.

6 MR.KENNEDY: Mr. Commissioner, we deal
7 with two of the points we are dealing with this morning
8 on pages 2 and 3, page 20:

9 ACCESS TO THE BOARD'S FILES

10
11 When a workman, in accordance with the
12 Board's practice and procedures has appealed to the
13 Review committee for reconsideration of the rejection
14 of his claim at the Claims Department level, and the
15 Review Committee confirms the rejection, the Committee,
16 upon request, provides a summary of information upon
17 which the Review Committee bases its decision.
18 Subsequently, the workman may request a hearing before
19 the Appeal Tribunal to appeal the Review Committee
20 decision. We have found the Appeal Tribunal procedure, as
21 a fact-finding body, a progressive advance in procedure,
22 expediting equitable adjudication. However, the Board's
23 practice provides only limited access to the medical and
24 non-medical facts contained in the Board's file on the
25 claimant; such limited access is provided in the Summary
26 of Information. The Board's authority in this regard is
27 set forth in Section 97 of the Act. The Board's General
28 Jurisdiction and Specific Authority, which is not open
29 to question and review in any Court, is set forth in
30 Section 72; subsection 4 states:



1 "the decisions of the Board
2 shall be upon the real merits and
3 justice of the case..."

4 The Union submits that full access to all facts in the
5 Board's files, relevant to a Claimant's hearing at the
6 Appeal Tribunal is the best guarantee that the principles
7 referred to in Subsection 4 may be best applied to the
8 satisfaction of all concerned.

9 In making this recommendation, Mr.
10 Commissioner, we wish it clearly understood that we do
11 not, in any way, impugn the integrity of any member or
12 officer of the Board. On the contrary, we believe our
13 recommendation would remove, as far as is humanly
14 possible, any criticism of conscious or unconscious
15 weighting of the facts contained in the Summary of
16 Information.

17 I do not know if there is too much
18 I can add to what is in the brief, Mr. Commissioner.
19 We have not dealt with point one, appeals on questions
20 of law to the court, and I just want to say that in this
21 respect by the fact that we have not dealt with it it is not
22 our position that there should be no change from the
23 present procedure. We can only say that you will perhaps
24 in some way be going back to the situation that prevailed
25 before the Act came into being and I think Mr. Justice
26 Meredith's finding on the purpose of the Act in the
27 first place was to get away from litigation which was
28 almost impossible for the workman to carry through and
29 certainly could only cause long delays and work to the
30 disadvantage of the worker.



1 On the question of the appeals itself,
2 the appeals setup now under the administrative board
3 it may be that it has not worked to the satisfaction of
4 all concerned, that there may have been delays. However,
5 this new process has come into being since there was a
6 change in the administration of the Board, and a new
7 chairman. Our experience is that it should be given a
8 full trial and full opportunity before any change is
9 suggested.

10 THE COMMISSIONER: Do you find now
11 that it is a slower procedure than it was before?

12 MR. KENNEDY: No, we don't, Mr. Chairman.
13 We find that in many cases it expedites the dealing with
14 the claim and our position is that it should be given a
15 full trial.

16 THE COMMISSIONER: It would only be so,
17 I suppose, in those cases where it has gone beyond the
18 review committee and then there is some time for appeal.
19 That would occur anyway on an appeal to the Board,
20 wouldn't it?

21 MR. KENNEDY: Certainly we don't believe
22 that a procedure such as this should be made part of the
23 statute. We have found in these cases the Board is
24 flexible if they are working with a system that has not
25 proved satisfactory. If they are working with a system
26 that has not proved satisfactory, then they are prepared
27 to listen to changes which may make it more satisfactory.
28 This, in our opinion, is worth giving a full trial before
29 we suggest any changes in the present appeals structure.

30 On the question of access to records I



1 think our brief pretty well speaks for itself that if
2 there is not a complete record of the facts before the
3 appeal tribunal that it leaves a suspicion in the mind
4 of the individual, the claimant, the workman, that
5 everything has not been heard and we feel that it would
6 not be to the satisfaction of all concerned if all the
7 facts were available to the claimant's representative
8 when he represents him before the tribunal and, of
9 course, we agree that at the present time when a trade
10 union representative or a lawyer represents the claimant
11 he has to get authority from that claimant in order to
12 have access to records or to have the records provided
13 for him. We believe that this practice is good, that
14 no one can just walk into the Board and ask to see
15 records of any claimant; they must have the authority
16 from that claimant first, and we believe that this
17 should be continued, but the full facts should be before
18 the people representing the claimant or the employer at
19 the tribunal. I think that is about all I have to say.

20 MR. ESTEY: So that the record would
21 be complete would you be good enough to give your name
22 and the office that you hold?

23 MR. KENNEDY: My name is William
24 Kennedy, I am a national executive board member.

25 MR. ESTEY: You say that all records
26 should be available and that includes the medical report?

27 MR. KENNEDY: Yes. I may say if it is
28 a question of neurosis or something that the man's doctor
29 or Board doctor might feel would not be in the best
30 interests of the man to have that revealed, that this



1 matter could be discussed with his representative and
2 therefore any evidence or testimony which might be
3 harmful to the man physically or mentally or any other
4 way could be treated in that way.

5 MR. ESTEY: You are saying, as I
6 understand it, that both parties should have full access
7 to the file in order to appeal to the appeal tribunal's
8 hearing?

9 MR. KENNEDY: That is correct.

10 MR. ESTEY: And I take it that once
11 that occurs then the appeal tribunal which will have a
12 transcript and be a public hearing will reflect the
13 details of the man's complete medical record?

14 MR. KENNEDY: Yes.

15 MR. ESTEY: Are you saying that somewhere
16 along the line that medical record should be partly
17 disclosed and partly not disclosed, or what is your
18 proposal?

19 MR. KENNEDY: I am saying that if it is
20 medical opinion after all a layman very often represents
21 a man and if there were medical reasons particularly a
22 neurosis which can have a bad effect on the man, that
23 this could be discussed with the representative prior
24 thereto so that nothing would be said in the man's
25 presence that may injure his health physically or
26 mentally.

27 MR. ESTEY: I take it you agree with Mr.
28 Osler's comments generally that the doctor may on occasion
29 want to talk only to the Board and that he should so
30 indicate and be given that right.



1 MR. KENNEDY; Or to the workman's
2 representative or the employer's representative, but they
3 should be made aware of it. After all, if the representa-
4 tive does not know all the facts, then he is still
5 groping. If he does know all the facts, then he has to
6 set about preparing or getting new medical evidence which
7 is one of the reasons why the Board will reopen the case
8 when at least he knows that he has reached the end of
9 the line and can so advise the workman, or if there is
10 something new that he has to do to establish the case,
11 then he knows exactly what he has to do.

12 THE COMMISSIONER: I suppose, Mr.
13 Kennedy, there are a certain number of workmen who are
14 not represented, who have not union representatives or
15 who do not choose to use union representatives, but go
16 themselves. How is one to distinguish in that event
17 between who is to be allowed to have material?

18 MR. KENNEDY: Well, unfortunately, we have
19 never been in that position, Mr. Commissioner, so I can't
20 speak to that.

21 THE COMMISSIONER: You don't approve of
22 not having a union representative?

23 MR. KENNEDY: That is right.

24 THE COMMISSIONER: How about this
25 automatic review on the first level of an appeal? It has
26 been suggested, it has been mentioned here this morning
27 that perhaps it should be an automatic review by the
28 review committee in all cases.

29 MR. ESTEY: That is the position that I
30 wanted to ask this witness about, Mr. Chairman. I take it



1 that your view on that one is that you would have no
2 objections if it were automatic. Of course, then you
3 would not need the notice to the workmen that the first
4 offer had been turned down.

5 MR. KENNEDY: No, I would have no
6 objections to that.

7 THE COMMISSIONER: But as it stands at
8 present when the workman is notified that his claim has
9 been turned down I understand then he is told that he can
10 apply for a review. As I understand, he is also told
11 that if there is any additional evidence he should send
12 it in if he has any additional evidence. Now, in that
13 respect I suppose the first review on occasion might be
14 wider than might be otherwise if it were automatic.

15 MR. KENNEDY: Yes, in this respect. It
16 is rather difficult for me to talk on the individual who
17 has no assistance, Mr. Commissioner, having a
18 representative who is familiar with the Act and the
19 Board's procedure. Then, of course, he immediately has
20 the opportunity to get all this information that is going
21 to be helpful to his case.

22 MR. ESTEY: I think what the Commissioner
23 is saying, though, is this: That is the man is not told
24 that the first officer has turned him down and then the
25 review committee goes on and reviews it that the review
26 obviously is limited to the precise record that the first
27 officer had when he turned him down. So the Commissioner's
28 suggestion is that the notice of the initial turn-down
29 is still relevant because it is possible the workman
30 would provide additional evidence which the review



1 committee would then take into account even though he is
2 not heard. Do you agree with that?

3 MR. KENNEDY: Yes.

4 MR. ESTEY: Do you find that the present
5 system introduced in, I think, March of 1965 is causing
6 delays or do you say that delays are well compensated
7 for by the benefits derived from the appeals procedure?

8 MR. KENNEDY: I can only speak for our
9 own case, and the individual who prepared this section
10 of this report, our compensation officer, I can do no
11 more than say what he says in the report that he feels
12 that it has been helpful and has expedited things.
13 We are talking from our own experience. We can't talk
14 for all who appeared before the Board.

15 MR. ESTEY: And of course, you are not
16 in your brief directing yourself to the problem that the
17 Board of Trade raised about assessment appeals by the
18 employer; you are talking about appeals on claims.

19 MR. KENNEDY: That is right.

20 MR. ESTEY: Thank you, Mr. Kennedy.

21 There is a comment, Mr. Chairman, on
22 the appeals procedure by the Motor Manufacturers'
23 Association brief. The Labourers' International Union
24 spoke to me, I might say, if someone is wondering why
25 we are at the "L's"; by reason of some difficulty for
26 people who are going to appear, they asked that they
27 appear tomorrow morning.

28 Then, there is a very short reference
29 in the Motor Manufacturers' brief. Is there anyone present
30 from that organization?



1 MR. DYKES: Present but not competent.
2 My name is Dykes and I am General Manager of the Motor
3 Vehicle Manufacturers' Association. The working
4 committee that prepared this submission representing
5 those active in Workmen's Compensation and in plant safety
6 were not able to have representatives here this morning
7 and I hope to be able to report to them with more under-
8 standing of the procedure you are following. I am sure
9 they would wish to be present. I would like to report to
10 them so that they will have this better understanding and
11 perhaps have suitable representation at a later date.

12 THE COMMISSIONER: On appeal procedure
13 perhaps you could have someone appear tomorrow on this
14 particular point. If not, you could at least let us know,
15 and if we do not hear from you what we will do tomorrow
16 is read in your memorandum.

17 MR. DYKES: Thank you very much, sir.

18 MR. ESTEY: You might be good enough to
19 let us know, if you would, by telephone what your wishes
20 are.

21 MR. DYKES: Very well.

22 MR. ESTEY: If we can move along, Mr.
23 Chairman, to the Ontario Federation of Construction
24 Industries. Is there anyone here from that organization
25 this morning, Ontario Federation of Construction
26 Industries?

27 We have great difficulty, Mr. Chairman,
28 with the alphabetical listing of these people, because
29 sometimes the first word is of no significance and they
30 get out of the order that the people may expect to be



1 heard in.

2 The next, dealing with this question
3 and which appears to be properly scheduled next is the
4 Ontario Federation of Labour.

5 MR. HAMILTON: I am the Secretary=
6 Treasurer of the Federation and Mr. Craigs is our
7 Welfare Director.

8 Mr. Commissioner, if I might just make
9 some preliminary comments and observations, I might say
10 that this procedure is rather difficult and awkward for
11 us and it will not be possible for us to attend these
12 hearings in the manner that you are now conducting them,
13 and I would just like for the record, Mr. Commissioner,
14 to raise this objection first and, secondly, to say that
15 where we cover matters in these proceedings that our
16 submission will be, of course, our position on the
17 relevant matters as they appear from time to time. We
18 will endeavour as best we can to have someone cover the
19 hearings, but we want to say that if anything arises the
20 relevant matters will be covered in our brief to this
21 Commission.

22 THE COMMISSIONER: It seems to me as far
23 as you yourself are concerned and your own appearance
24 is concerned it would be more satisfactory for you to
25 hear this complete issue dealt with at one sitting than
26 to have to come back maybe on a number of occasions when
27 something you are particularly interested in is going to
28 appear and you might not know when the person who was
29 advancing that argument was going to be called, what day
30 of the week, or anything of the sort. It was felt that



1 the other system was more cumbersome.

2 MR. HAMILTON: Mr. Commissioner, it is
3 just simply a matter of juggling schedules to try to be
4 here and do it. As I say, we will cooperate to the degree
5 that we will try to have someone here if we possibly can,
6 but I can see in the future that this may not be possible,
7 so I am just raising it at this time.

8 THE COMMISSIONER: Well, you will be
9 given an opportunity of being heard.

10 MR. HAMILTON: I was going to suggest
11 that if there are at the end of these hearings questions
12 that arise out of our brief or out of discussions that
13 we can be helpful with we will be more than glad to
14 appear and present whatever evidence we can to the
15 Commission.

16 THE COMMISSIONER: On any occasion, as
17 I have said, when you are not here your submission will
18 be read and if you wish to add anything to it, you will
19 have an opportunity of doing that at some other time.

20 MR. HAMILTON: Thank you very much.

21 Now, on this particular aspect of it
22 the matter of appeals to the courts I do not think it is
23 necessary for us to read because our arguments are simply
24 arguments in favour of and maintenance of the present
25 situation in regard to appeals. We think it has worked
26 over the many years and think it has worked to the
27 satisfaction of the workers of Ontario and we would not
28 want to see any changes made and all of the things that
29 are in our brief are simply arguments in support of that
30 position. We think it would be costly and delay would be



1 a great problem and we suggest to you that in regard to
2 appeals to the courts the thing should be left as is in
3 the present Act. It has worked well and we think it
4 should be left alone.

5 MR. ESTEY: Mr. Hamilton, is it fair to
6 say in summary, your brief for the benefit of those who
7 haven't heard it says in effect that the American system
8 in some states allows certain litigious proceedings
9 and that therefore the cost in terms of the net dollar
10 for each individual workman, his return is lower than in
11 the Ontario system. You are saying therefore the closer
12 we stay to the Act as it is now constituted the
13 more economical it is, that the greater part of the
14 dollar contributed by the employer reaches the man who
15 has been injured, that is what you are saying?

16 MR. HAMILTON: That is right.

17 MR. ESTEY: That might deal with the
18 whole thing, but I was just wondering if you could
19 assist the Commissioner on the present system with any
20 comments. Presumably your organization is as closely
21 associated with the appeal procedure and the Workmen's
22 Compensation Board operations generally as anyone else.
23 Therefore, I am wondering if you could help us on this
24 question of whether or not the present appeal procedure
25 which you say should be allowed to have a fair trial is
26 adequate. I wonder if you have any comments to make as
27 to whether this four-layers or four tiers of appeal are
28 necessary, or is it adequate? Have you any comments on
29 that?

30 MR. HAMILTON: I think our position on

*Nethercut & Young**Toronto, Ontario*

1 this is that they did overhaul the appeal procedure and
2 inserted the appeals tribunal and we have had mixed
3 reception across the province. Some of our people say
4 that it works fairly well; others say that there are
5 quite a number of delays involved. Others of them say
6 that it is a much more formal procedure than they have
7 been used to working with, particularly those people who
8 come by themselves to be represented in front of it.
9 But they think it takes on a kind of a courtroom
10 atmosphere and they are having some difficulties in
11 this regard. But I think our position is that it is a
12 procedure that is designed to give a fair discussion of
13 the facts on particularly difficult cases and all we
14 are saying is that it should have a little bit more time
15 to work out to see whether it is going to be satisfactory
16 or not. We have no serious difficulty with it at the
17 moment, but we have spot places where people say there
18 are delays and others that they have trouble with the
19 procedure. These are inherent in any new thing, I
20 think. I think the appeals tribunal after it is working
21 properly will serve a useful purpose.

22 MR. ESTEY: I asked you that question
23 because in some of the other submissions --- one other
24 at least --- on behalf of a segment of the trade union
25 group says that it is too bad that we can't go back to
26 the good old days, that is, pretty well the way it is
27 written --- because we have lost the close contact of
28 labour with the Compensation Board officials that we used
29 to enjoy and which in an informal way used to solve a
30 lot of difficulties. Now we have a very formal setup.



1 MR. HAMILTON: These are general to the
2 comments that we have received across the province, just
3 exactly as you have stated, that there are both trends of
4 thought, but I have a feeling and my comment would be that
5 once the appeals tribunal is in operation for a period
6 of time and the people begin to get adjusted to it, they
7 are not accustomed to new things and don't like new
8 procedures and so on, that provided it does not become
9 too formal and the procedures are relatively simple to
10 follow and laymen can appear before it and make their
11 case then I think it will serve a useful purpose and be
12 helpful.

13 MR. ESTEY: Somewhere I noticed in your
14 comments something to the effect that these medical
15 summaries may have been rather difficult to comprehend.
16 What do you say as to whether or not in preparing for
17 the appeal tribunal which is the first of what I might
18 call a formal level of appeal, what do you say that the
19 situation should be with regard to access to the whole
20 file and not just a summary of the file by the
21 representative of the workman and the representative of
22 the employer?

23 MR. HAMILTON: Our position is that we
24 should have access to the whole file, all of the medical
25 evidence and all of the evidence so that the workman can
26 be properly represented. I don't think that you can go
27 to a tribunal or the appeal procedure at any level unless
28 you have all of the evidence and the only way we can get
29 all of the evidence is to have it in full, not by someone
30 else giving a summary of it for you. I heard the



1 arguments here this morning and I can understand the
2 problems involved that possibly it would not want to be
3 made public, but our position is it should be made
4 available to the workman so he can defend himself or
5 get his claim adjusted.

6 MR. ESTEY: Have you had occasion when
7 you were dealing with appeals to desire or to think it
8 would be helpful to have a neutral medical officer
9 examine the workman before the appeal tribunal hears
10 the case because there appears to be a conflict of
11 evidence in the case of the doctors prior to that time?

12 MR. HAMILTON: As I understand, this
13 is done by the Board doctors now.

14 MR. ESTEY: Right, but I wonder if you
15 have found an occasion where it hasn't been done because
16 they don't think it is a conflict but your worker might
17 want to have that done before the appeal tribunal sits.
18 Have you ever run into that?

19 MR. HAMILTON: I don't think I have any
20 specific case.

21 MR. ESTEY: You don't have the right
22 under the Act now, the Board has that right. You don't
23 feel that is essential?

24 MR. HAMILTON: Not at the moment.

25 MR. ESTEY: Thank you, Mr. Hamilton.

26 The Ontario Forest Industries Association.

27 MR. MacLAGGAN: My name is Mr. MacLaggan,
28 and I am the Manager of the Ontario Forest Industries
29 Association. I am very sorry to be here because all the
30



1 people who are very smart and alert and who know this
2 work very well have run out on me, and we did deal with
3 appeals very, very lightly. I might give you a little
4 rundown on how this was written and why we mentioned it
5 if you would like. It is on page 3, the right of appeal.
6 Due to a tremendous amount of activity in our industry
7 at the moment the member companies actually gave me a
8 little guidance and then said, "Do the best you can, but
9 be sure and put on record the things that we are
10 concerned with", so that is what our brief, which seems
11 to be rather inadequate, does do: It puts us on record
12 with the things that really concern us and it doesn't
13 explain them or go to any great lengths on them.

14 The Right of Appeal

15 The economy of the Province depends
16 upon increasing industrial activity, encouraged by closer
17 co-operation between Government and Industry --- and we
18 really believe this. In this atmosphere, the lack of the
19 right of appeal on policy decisions of the Board
20 warrants consideration. It is recommended that the
21 Commission consider the addition of a clause to the
22 Workmen's Compensation Act that would provide for the
23 right of appeal with rules for arbitration.

24 We do feel that the Board has terrific
25 power and during all our other dealings with departments
26 of the Crown there generally is a clause that allows for
27 arbitration of some kind. This is all we want to point
28 out, that in this atmosphere of cooperation there should
29 be in this particular instance some chance for appeals
30 on decisions by the Board and I don't mean decisions



1 regarding law.

2 THE COMMISSIONER: Well, as an example
3 what would be a policy decision, what you refer to as a
4 policy decision of the Board?

5 MR. MacLAGGAN: I hesitate to think
6 about that at the moment, but I will do my best on this.
7 It was that if the Board decided that it could do without
8 or to a large extent reduce the activity of the safety
9 associations it would seriously affect, we feel,
10 accident prevention and cause a series of accidents on
11 operations such as ours. We do operate in an organized
12 territory completely out of the way and we have found
13 these things very comfortable and we are afraid with a
14 decision of this kind that we would have no appeal.
15 That is one example.

16 THE COMMISSIONER: Up to now it has
17 been going the other way, they have been increasing, not
18 decreasing, I suppose, the functions of your committees,
19 safety committees?

20 MR. MacLAGGAN: There was something that
21 happened just recently that we felt might detract from
22 the importance of the Association. I think it was the
23 establishment of a very large safety committee.

24 THE COMMISSIONER: One thing we have
25 certainly got to consider here is the whole question of
26 safety committees, but that is the matter of policy that
27 you refer to.

28 MR. MacLAGGAN: Yes.

29 THE COMMISSIONER: Thank you, Mr.
30 MacLaggan. There will be some recommendations regarding



1 that.

2 MR. MacLAGGAN: I am sorry, sir, that
3 there is not someone here who is far more familiar, but I
4 do not think it is going to be necessary. I believe
5 that other people are going to bring up other points
6 which we would have discussed had we done it on a really
7 legal basis, but on the basis we have done it and
8 bringing it out and putting ourselves on record I thank
9 you for the opportunity.

10 MR. ESTEY: Before you go, this word
11 "policy", to you you have already explained to his
12 lordship, but I take it that word "policy decision"
13 includes what someone else earlier this morning was
14 talking about in having a right of appeal from assessment
15 levies, classification of industries, putting a sub-
16 division of an industry, say, a piledriver, putting those
17 in the general contractors' section and rating them as if
18 they were a general contractor. That sort of thing you
19 feel should be subject to a right of appeal of some kind
20 or somebody other than the Board?

21 MR. MacLAGGAN: That is right, we would
22 think so. If you are referring to, say, plywood people
23 as against lumbering people we would think that the right
24 of appeal should be there.

25 MR. ESTEY: I take it that you are not
26 suggesting that there be a right of appeal from a
27 decision that a man should or should not get compensation
28 for a specific accident.

29 MR. MacLAGGAN: No, we didn't touch it,
30 so I have no comment to make.



1 MR. ESTEY: You are not instructed one
2 way or the other on that?

3 MR. MacLAGGAN: No.

4 MR. ESTEY: Thank you.

5 THE COMMISSIONER: And when you talk of
6 a right of appeal, Mr. MacLaggan, you are referring to an
7 appeal to the courts or an appeal to an independent
8 assessor such as an arbitrator?

9 MR. MacLAGGAN: We are familiar with
10 arbitration and that is what we are thinking of.

11 THE COMMISSIONER: You are thinking of an
12 appeal to an arbitrator?

13 MR. MacLAGGAN: Yes.

14 THE COMMISSIONER: And, of course, there
15 is the right of an appeal from an arbitrator, maybe only
16 on questions of law. All right, thank you.

17 DR. MELVIN: I am Dr. Melvin, Vice-
18 President of the Ontario Medical Association.

19 Mr. Commissioner, as you know, this is
20 the age of specialization in medicine, and there are one
21 or two other doctors with me whom I would like to be able
22 to use on occasion when it is an area with which they
23 are more concerned.

24 THE COMMISSIONER: You are free to do
25 that whenever you feel like it.

26 MR. ESTEY: Would it be convenient if we
27 had them come up and sit with you?

28 DR. MELVIN: I would appreciate it, sir.

29 Mr. Commissioner, on the question of
30 appeal procedures our comments on this are on our brief



1 starting on page 4 representing several paragraphs. In
2 the first of these we just comment:

3 It is our understanding that the
4 appeal structure ---
5 and there are no recommendations to make on this
6 particular subject at all. We say:

7 It is our understanding that the appeal
8 structure under the present Workmen's Compensation Act
9 provides for four levels of appeal - Claims Department,
10 Review Committee, Appeal Tribunal and the Board.

11 Our comments will be confined to the
12 matter of medical evidence provided to the appellant.
13 We believe the current practice is to provide the
14 appellant with a 'summary' of evidence, including a summary
15 of medical reports. We are aware that there are those
16 who feel strongly that instead of a summary the appellant
17 should be provided with a copy of the total evidence,
18 and in particular, with a copy of the complete medical
19 reports.

20 In our opinion, medical reports should
21 be treated as privileged documents and thus not made
22 available to the appellant even in summary form. We
23 feel this way because physicians reporting to the Board
24 try to be as helpful as possible to the doctors employed
25 by the Board and thus write their reports as one doctor
26 writing to another. Technical language is used and
27 all information and observations are reported in a frank
28 manner.

29 The purpose of the reports is to assist
30 the doctors working in the claims department to make a



1 fair assessment of the medical aspects of the claim.
2 To do this they must be provided with all relevant
3 information about the particular matter in question.
4 There is no problem so long as the reports are privileged
5 documents.

6 What will happen if medical reports are
7 not privileged? It must be remembered that the majority
8 of compensation cases are treated initially by their
9 family physicians. If medical reports are not privileged,
10 then family physicians are not going to put anything in
11 their reports which they do not want their patients to
12 know. In other words, their reports will no longer
13 contain all the information which might be required to
14 make a fair assessment of the claim.

15 Moreover, a family doctor practising
16 in a community, and especially in an industrial community,
17 is dependent upon compensation cases among others to
18 build up his practice and his reputation. Being human,
19 he is not going to jeopardize his reputation with
20 patients or the union active in his community by putting
21 in his reports to the Board information which might be
22 interpreted as prejudicial to workmen's claims even if it
23 is information which he feels the Board requires to make a
24 proper assessment of the claims.

25 Finally, if his reports are not to be
26 privileged, the physician will have to write his report
27 in the knowledge that anything said therein may be the
28 basis for an action for libel.

29 For all these reasons, we hold strongly
30 to the opinion that if the purpose to be served by medical



1 reports is to provide the Board with all the information
2 doctors have in their possession which is likely to
3 have a bearing on the proper assessment of a claim,
4 then medical reports should be privileged documents.

5 That, in essence, sir, is the outline
6 of our comments. If I could speak to it for a moment
7 I would like to put it from the doctor's point of view:
8 What is a medical report, just what purpose does it
9 serve? Earlier today we had comments from the Toronto
10 Board of Trade that they believed the doctors had
11 integrity and they would not juggle the reports around.
12 The plain fact is if I have a man with a broken leg and
13 send out a report within the first paragraph my stenographer
14 can tell who the report is going to. If I am going to be
15 writing to another doctor saying, "George, I saw your
16 man", I carry on this way. If I am writing to the Board
17 I use different phrasing. If I am writing to a lawyer
18 I still do it differently. There are three different
19 ways, they are all honest, all decent and above
20 reproach, but they are different.

21 Now, when I am writing a Compensation
22 Board doctor about an injured workman there is nothing
23 further from my mind than litigation, lawsuits verifying
24 each sentence. I am trying to help another doctor look
25 after an injured working man. The big problem with the
26 Compensation Board is that it is in fact a mail-order
27 business; in other words, with all the accidents the
28 Compensation Board cannot see each man or each woman who
29 is hurt and I have to put them in the picture. And so
30 if the report contains information which may not have a



1 bearing on the adjudication, may not have a bearing on
2 the financial outcome, but I think it is important for
3 the other doctor to know just who am I dealing with in
4 Kingston, just what sort of working man am I stuck with
5 in Port Arthur, just what sort of a fellow is this? I
6 have to let the other doctor know, and I have to tell
7 him in writing. It is a mail-order business. If they
8 get the doctor out and have a look at our problem this
9 would solve the matter.

10 I thought the best way to look at this
11 would be to suggest that medical reports if they are
12 privileged how would this help people? There are three
13 people concerned, there is the Compensation Board, there
14 is the doctor, and there is the patient, and at the outset
15 I think I should say that as far as I have been concerned
16 with my dealings with the Compensation Board I don't
17 think there is any adversary situation at all. I have
18 always felt they were honestly trying to do their best
19 by the working men. If they are not ganging up against
20 me and the patient, I am not ganging up with him against
21 them. It has always struck me as an honest effort to get
22 thing straightened away.

23 I have already mentioned that the
24 Compensation Board to do their job properly needs a lot
25 of information. We probably give them more information
26 than the bare bone. This is to help their doctors work
27 out what is actually wrong with the working man. Just
28 a bald statement "Broken leg, 43-year-old labourer"
29 doesn't help them at all in working out what they are
30 set up for.



1 Secondly, when you get to the doctor
2 the doctor himself has certain problems in connection
3 with this over-documentation. Unless he cuts it down to
4 the very bones he is liable to get himself somewhat
5 compromised. I think we are all human and recognize the
6 position of a doctor in a small town with one industry
7 getting himself compromised, getting himself associated
8 with being the Compensation man or in with the company.
9 He has got to be very careful to be ostentatious, fair
10 and unbiased, and he is undoubtedly subject to community
11 pressure. This means everything he says is suddenly
12 going to be put into the hands of his patient, and he is
13 going to have to hedge and cut down and limit as much as
14 he can without getting into dishonesty by limiting. When
15 we speak about the truth and the whole truth he is going
16 to cut back from the whole, he is going to have to, and
17 I think this may not be morally right, but this is the
18 way life is, and this is what the doctors in small
19 communities have to do, they are going to have to keep
20 their cards against their chest. This bothers them.
21 They are going to be careful that facts that should be
22 kept against their chest should be done so. He may not
23 particularly like this. Specifically, one whole area ---
24 and that is of the emotional assessment of the patient---
25 is going to have to be left out. You can't treat a
26 nervous patient by telling him he is nervous or that you
27 know he is nervous. The emotional assessment which is
28 very vital in working out how the man is going to recover,
29 at what rate is he going to recover, all this is going to
30 have to be blended down and diluted.



1 The biggest problem is our concern for
2 the patient. I mentioned this as a letter between two
3 doctors. I am writing a doctor on the Board telling him
4 about an injured working man. If someone other than a
5 doctor gets hold of that letter it may not work out
6 quite the way he thinks. It is interesting, for example,
7 we were discussing this with our lawyer and our lawyer
8 taking on the Board. We were discussing the medical
9 jargon and he said he understood it. Somebody said,
10 "Fine, what would you think if you read the report
11 about yourself and the word 'S.O.B.' came up?". He fell
12 into the trap and said, "Well, I wouldn't think this
13 was very kind", and we all laughed and said, "We know
14 what you think 'S.O.B.' is. We think of it as shortness
15 of breath", so he was most embarrassed. What I am trying
16 to say is it does not necessarily mean the same to us as
17 it does to them.

18 A case in point you may write the
19 Compensation Board and start your comment by saying,
20 "This is a tired, worn-out little working man, an
21 illiterate farmer", and you mention some ethnic groups;
22 let us say, Tibetans, because there are none in the room.
23 If he gets an adverse decision of the Board he probably
24 says, "The Board is mad at Tibetans, and the doctor
25 drew the attention of the Board to the fact that I am a
26 Tibetan," and this is what I am after. Actually what I
27 am trying to do is say one doctor to another that this
28 particular ethnic group have an appalling time with the
29 English language, and "Take with a grain of salt what
30 you get from the patient, you will have to put up with a



1 very poor description from the patient of what is going
2 on, we are having real trouble getting through to this
3 fellow." We are not writing the Board, "Down with
4 Tibetans Week". What we are trying to do is to alert
5 the Board that this man is going to have trouble
6 communicating, we are going to have trouble communicating,
7 treatment by therapists is difficult. The patient may
8 treat this as an ethnic slam and quite misinterpret
9 what is going on.

10 The next thing that concerns us is the
11 public stripping of the patient. We don't all get
12 to the top of the heap, we don't all play in the
13 National Hockey League for various reasons, usually
14 because we are not capable of it, but many of us build
15 up an explanation and "The only reason this man is not
16 working hard is because of his back, that is why he is
17 not doing better in the company!" Now, if you go and
18 put this out in public to the man you have done him a
19 very serious disservice. His emotional concern, his
20 fright about going back to work and that he is really
21 building up an alibi, this may be so, but you can't do
22 this to a man. You can no more strip his clothes off
23 in public than you can strip his emotional protections
24 that he has put up. We think they should be guarded
25 against this.

26 Many people immediately interpret a
27 comment about emotional reactions as being crazy. "It
28 is all in my nerves". We say, "We didn't say it was all
29 in your nerves". We say there was an emotional reaction.
30 He goes on and says the Compensation Board thinks he is



1 crazy, the doctor thinks he is crazy. Nobody said this
2 at all. He goes home convinced that he has to prove his
3 sanity and then go ahead and prove a case --- this sort
4 of misinterpretation.

5 The other situation where we run into
6 trouble is where we do in fact cheat a little bit. I am
7 sure it will come as a shock to no one in the room to
8 learn that there are some working men who would rather
9 sit in the room than go back to work. You have to nudge
10 these people sometimes and what we often will do is
11 write the Board doctors or talk to them and say, "Look,
12 I think this fellow can handle work, let us get him in",
13 and the only way to get him there is to apparently close
14 down on him and say, "I am sorry, this is it, back you
15 go to work, your doctor says you are ready to go back to
16 work". And after I have said, "I think he is ready for
17 a trial", but to say to the patient, "I think you are
18 ready for a trial" dilutes the whole effect. If I only
19 think he is ready for a trial he is damn sure that I
20 know he is not ready to go back to work and he is not
21 going to go. This little bit of suggestion to the Board,
22 "You give him a shove and I will watch him and let you
23 know if he makes it", this all has to be presented to
24 the patient.

25 I am sorry to run on so long, but there
26 is a lot of emotion tied up with these medical reports
27 and these are some of the reasons that we think that
28 they should be looked upon as privileged and if the
29 reports which are sent to the Board are not for the
30 purposes of litigation they should not be so construed.



1 MR. ESTEY: Doctor, you have posed quite
2 a problem to those present here who may be blessed with
3 the legal mind because you want to create a document
4 which is going to be the basis of a decision, but you
5 don't want the person most affected by the decision to
6 know what is in the document, that is a problem, isn't
7 it?

8 DR. MELVIN: That is right.

9 MR. ESTEY: Is there any possibility that
10 the document could be divided into more than one part so
11 that the doctor's reports relating to the specific
12 diagnosis, for example, would be a document which would
13 be publishable in the hearings, whereas perhaps a
14 recommendation as to, for example, in the form it says,
15 "If he is able to go back to work; on what date, and why?"
16 and there is some room for an explanation of that. Could
17 that be separated and perhaps made confidential?

18 DR. MELVIN: I think the point is that
19 if you wish to use the report for legal purposes in the
20 broad sense of the word it should be so nominated and
21 then I would delete the material that is extraneous,
22 do you follow me --- that the man comes from Tibet has
23 got no bearing on whether his leg works or not. It has
24 a great deal of bearing on how long the Board should
25 budget to have him off work, how long he is going to be
26 out of business on account of therapy and so on.

27 THE COMMISSIONER: My only observation
28 about that would be that it might meet some of the
29 objections that are raised, but would not be of much use
30 to the man in knowing why his claim had been turned



1 down.

2 DR. MELVIN: Except, sir, this happens
3 in practically every legal case we are involved in. If
4 a lawyer writes me for a report about his client I just
5 don't run off a Xerox in my office, I put it in order
6 and put out the pertinent material and here again all I
7 am saying is that it is an almost off-the-cuff comment
8 to another doctor whom I may know on the Compensation
9 Board that George is dragging his heels a little. I
10 don't want this held against the man for a variety of
11 reasons. That is why I am saying if you wish medical
12 information it can be presented recognizing the
13 circumstances under which it is to be used.

14 MR. ESTEY: Perhaps we could come at this
15 another way, Dr. Melvin. When a man first goes to the
16 doctor for a compensation case I take it that the
17 doctor is in rather an unusual position in that he knows
18 he is going to be paid by the Board but nevertheless his
19 patient is still a man across the desk from him. Now,
20 to begin with --- and I would like to ask you a series
21 of questions on this --- to begin with does the man give
22 the doctor anything in writing to authorize the doctor
23 to release to the stranger, the Board, the result of your
24 examination?

25 DR. MELVIN: Not usually.

26 MR. ESTEY: That is taken as implicit
27 in the arrangement with the patient that you will so
28 report?

29 DR. MELVIN: But if he hands me a report
30 and said, "Would you fill it out?", we construe this as a



1 verbal agreement that we fill out a report and send it
2 in.

3 MR. ESTEY: As a fact these reports
4 are taken in practice --- you correct me if I am wrong
5 and I may well be --- I take it in fact these report
6 forms are on the doctor's desk and the fellow comes in
7 with his arm in a sling and you say, "Here is another
8 compensation case", and you pull the form out. That is
9 what happens, isn't it?

10 DR. MELVIN: Here you are talking about
11 the first report?

12 MR. ESTEY: Yes.

13 DR. MELVIN: Yes.

14 MR. ESTEY: I take it that in practice
15 it is regarded as implicit in the arrangement that the
16 doctor will go ahead and report to the Board?

17 DR. MELVIN: Usually the first report
18 form comes with the man or from his employer, not from
19 the doctor. In other words, I have not got any first
20 report forms in my office. The ones I fill out are the
21 ones that are brought to me by the patient.

22 MR. ESTEY: This form A, for instance,
23 doctor's first report.

24 DR. MELVIN: We are getting into
25 semantics now. There is a yellow thing which you stick
26 down and which you send in first, it folds up in an
27 envelope.

28 MR. KERR: That form is not used any
29 more, Mr. Estey.

30 MR. ESTEY: The doctor's form or my



1 form?

2 MR. KERR: The one the witness is
3 referring to.

4 MR. ESTEY: Let us not get into the
5 details of that, but in any case whoever supplies the
6 form I take it the doctor is told by the patient in so
7 many words, "Here I am, I am hurt, tell the Board".

8 DR. MELVIN: That is right.

9 MR. ESTEY: Then whatever form is used
10 I take it you have to tell the Board everything that you
11 professionally observe about this fellow in connection
12 with that accident.

13 DR. MELVIN: No, sir, not on the form.
14 You don't have to fill out all the questions. Indeed,
15 usually you don't, you would be there all night. Usually
16 you just put down what is permanent. This is different
17 from a consultation report. We are talking about a
18 consultation report on my letterhead, a detailed thing
19 like this. That is quite different from what goes on a
20 form.

21 MR. ESTEY: But you don't make out, I
22 take it from what you have said, a consultation report
23 for the Board?

24 DR. MELVIN: Actually I do. I am sorry,
25 I am a consultant and the patients can't come direct to
26 me, they have got to come from somebody else.

27 MR. ESTEY: Let us put yourself in the
28 case of the general practitioner for the moment. When
29 he goes to the general practitioner does the practitioner
30 send a report to the Board on a Board form, or does he



1 sand a consultation report?

2 DR. MELVIN: He usually sends it on a
3 Board form, usually. He has his choice, he can do it
4 either way.

5 MR. ESTEY: And obviously the purpose of
6 the arrangement is to have the doctor report to the Board
7 the medical situation arising as a result of his
8 accident.

9 DR. MELVIN: That is right.

10 MR. ESTEY: And in the report form there
11 is a great deal of information preliminary to the
12 doctor's medical comments as to the time of the accident
13 and the prior history of the ailment if it is not a
14 fracture and this sort of thing you first get from the
15 patient.

16 DR. MELVIN: Right.

17 MR. ESTEY: Ordinarily what the patient
18 tells you in your ordinary practice, now you are a
19 general practitioner, is of course, for your information
20 only and you don't send that on to anybody.

21 DR. MELVIN: That is right.

22 MR. ESTEY: But here the arrangement
23 is implicit that you are going to report to the Board
24 so you sit and ask him when did he have this back
25 ailment before and this kind of thing.

26 DR. MELVIN: That is right.

27 MR. ESTEY: Then you make a report to
28 the Board and in due course the Board pays the doctor's
29 expense, the patient doesn't have to pay it, the Board
30 does. Do I understand you to say to his lordship that



1 the purpose of the report is such that while your
2 ordinary patient-doctor relationship is bent to the
3 extent that you communicate it to the Board that you
4 don't want it bent to the extent that it is communicated
5 to the world at large, that is the problem.

6 DR. MELVIN: I was not having much
7 concern about what would go on that form because it is a
8 form and you can fill it out and avoid all the issues.
9 I am talking about a report by which I mean ---

10 MR. ESTEY: A consultation report?

11 DR. MELVIN: A consultation report I
12 am talking about. It would hardly be very difficult to
13 get anything disturbing or for that matter, anything
14 of very much value on one of those forms.

15 MR. ESTEY: I was going to put that to
16 you I hope in more diplomatic language. Eventually,
17 though, you do come on this form, though, to a question
18 which says, "Is he able to perform his usual work?". Now,
19 the workman says, "By God damn, I can't do that work any
20 more", and the doctor puts "Yes" in there, that he is
21 able to, then you have a conflict now between the doctor
22 and his patient.

23 DR. MELVIN: Yes.

24 MR. ESTEY: Is that the kind of question
25 which you don't want the patient to know your answer to,
26 or is that question answered in the presence of the
27 patient?

28 DR. MELVIN: I personally would feel
29 most doctors would not tell the patient one thing and
30 report the other. They would say, "I am sorry, George,



1 like it or lump it; I am going to put down 'Yes' that
2 you are ready to go to work".

3 MR. ESTEY: And you would tell him that
4 at the time?

5 DR. MELVIN: I personally would.

6 MR. ESTEY: The next question says,
7 "If the answer is yes, on what date?", and then I think
8 the practice would be to tell the workman what the report
9 says on that.

10 DR. MELVIN: To be honest with you,
11 you say, "When can he go?", and he says, "I will be on
12 midnights if I go tomorrow", so you say, "What date is
13 Monday", and he will say, "Monday is the 8th". Generally
14 you don't want this man to start off on the midnight
15 shift. It is done by consultation.

16 MR. ESTEY: Now I get to the consultation
17 report which I can see is perhaps of more importance
18 because this is the more serious case, and how does the
19 workman get to the specialist? He goes first to the
20 general practitioner and then is referred to the
21 specialist?

22 DR. MELVIN: He gets to the specialist
23 or consultant by one of two mechanisms. Either his
24 doctor requests permission of the Board to refer him
25 to the specialist and the second mechanism is the Board
26 will request the doctor to send him to a specialist.
27 This comes up elsewhere in our brief. He reaches the
28 specialist by two methods. Either his doctor refers him
29 or the Compensation Board refers him. Usually he is
30 lying on the floor and you don't wait to ask the



1 Compensation Board. Usually you say, "I would like some
2 help with this, could I have an orthopaedic surgeon or a
3 plastic surgeon?". There are cases where the Compensation
4 Board directs that the man be sent to the specialist.

5 MR. ESTEY: Is this the medical referee
6 or just a specialist?

7 DR. MELVIN: Just a specialist.

8 MR. ESTEY: What speciality are you in,
9 Doctor?

10 MR. MELVIN: Orthopaedics.

11 MR. ESTEY: And this man gets in front
12 of you by either route and I take it that you are aware
13 that the costs of this work will be paid for by the
14 Board.

15 DR. MELVIN: That is right, sir.

16 MR. ESTEY: But still the patient is
17 a man who is sitting in front of you being examined.

18 DR. MELVIN: That is right.

19 MR. ESTEY: Again I take it you write
20 a detailed report of your medical operations and this
21 condition.

22 DR. MELVIN: That is right.

23 MR. ESTEY: And you do that, I suppose,
24 with the knowledge and purpose that it goes to the
25 Workmen's Compensation Board.

26 DR. MELVIN: That is right.

27 MR. ESTEY: And it goes there for the
28 purpose of determining his entitlement or lack of it to
29 the compensation.

30 DR. MELVIN: No, sir, this is the point I



1 am trying to get at. We can help a little with entitle=
2 ment except that we are not at the accident scene. I am
3 concerned only with medical treatment, outlining what is
4 required and the possible expenses. The entitlement is
5 something we have very little to do with.

6 MR. ESTEY: Let me go back then, because
7 I want to be sure that you and I understand each other
8 and, more important, that the Commission understands.
9 If the ailment is the famous back ailment --- I refer to
10 that because I guess 50 per cent of the briefs talk
11 about back ailments --- when the man comes to you as a
12 specialist and you write out your observations on his
13 back ailment I take it it is possible, in the range of
14 possibilities, that you will come to the conclusion that
15 he doesn't have a back ailment and you will so state.

16 DR. MELVIN: Yes.

17 MR. ESTEY: When you write that report
18 out you do it for the purpose of advising the Board and
19 explaining what the whole of the circumstances are including
20 your opinion that he doesn't have a back ailment, is that
21 right?

22 DR. MELVIN: Yes, for the purpose of
23 arranging treatment.

24 MR. ESTEY: And this kind of report is
25 the kind of one that you say you don't think can be as
26 fully and frankly written if it is in the contemplation
27 of all concerned that ultimately it will be published,
28 is that right?

29 DR. MELVIN: This would come into the
30 same category.



1 MR. ESTEY: I take it that you also don't
2 on this kind of occasion tell the patient, "Everything
3 is going in that report".

4 DR. MELVIN: No, sir.

5 MR. ESTEY: What happens if he asks,
6 "Look, I am the patient, I want to know what you are
7 writing down there"?

8 DR. MELVIN: This is what they call
9 playing it by ear ---- sometimes yes, sometimes no.
10 It depends to a large extent on the patient.

11 MR. ESTEY: If your conclusion is that
12 the man is in fatal condition you are not necessarily
13 going to tell him that?

14 DR. MELVIN: That is right. I might point
15 out we are talking about a very small segment,
16 incidentally, that concerns us. I mean of 20 reports I
17 send out this problem we are talking about might arise
18 in one, the problem of something in that I didn't want
19 the patient to know. This is not a routine every-day
20 situation, but it occasionally comes up, and when it
21 comes up it is significant if you can put it in focus.
22 It is a problem I might come up against once a year.

23 MR. ESTEY: Normally there is no
24 significance at all in whether or not the report is
25 disclosed?

26 DR. MELVIN: That is right, sir. I
27 personally am in the habit of dictating it in front of
28 the patient so he hears what I am saying. Not everybody
29 does this.

30 MR. ESTEY: What you are saying is that



1 on occasion and on very important occasions it should be
2 left to the doctor to say whether or not the report in
3 whole or in part should be disclosed.

4 DR. MELVIN: That is what I appear to
5 have said and I grant you this is not quite ----

6 MR. ESTEY: I just wanted to know.

7 DR. MELVIN: This is in essence what I
8 ended up saying, but I didn't quite want that life and
9 death power decision left to myself or to other individual
10 physicians.

11 MR. ESTEY: How do you think it should be
12 handled?

13 THE COMMISSIONER: There might be
14 occasions when you would like to be able to say to the
15 patient, "Well, this is privileged for the Workmen's
16 Compensation Board and I am not allowed to disclose it".

17 DR. MELVIN: Yes, we could use that
18 mechanism presumably. What I am trying to say is talking
19 to another doctor or writing another doctor who is acting
20 as a doctor in the patient's interest I may make certain
21 comments which I would not be anxious to be produced in
22 court, which I would not be anxious to be a matter of
23 public record, although they are honest opinions and
24 decently arrived at. There again very often the medical
25 man can decide what is best for the individual patient to
26 know and what is best for him not to know.

27 MR. ESTEY: I wanted to put to you and
28 perhaps I should have put it this way to help you a
29 little bit in understanding what you are getting at.
30 Do you think it is necessary to have a blanket privilege



1 so that the report never gets out in order to protect
2 those isolated occasions but important occasions where
3 the report should not get out?

4 DR. MELVIN: We are an association of
5 individuals and we are very much concerned about the one
6 individual we are talking about and we would rather see
7 a blanket rule. The point is all the information that
8 is necessary can be obtained, do you follow me? I would
9 doubt if there would ever be a situation whereby one
10 doctor insisted ~~the knee was~~ bending and the other doctor
11 insisted that it wasn't. The question is a medical fact.
12 I don't think you would get much dispute between different
13 medical people. This sort of information, there is no
14 argument about it. You can publish that in the
15 newspaper for all we care. It is when we get down to
16 some of the background that it is important to treating
17 the patient but is not important, and indeed may
18 interfere with accurate assessment, that we want the
19 stuff held back. Do I make myself clear?

20 MR. ESTEY: Yes, but I wanted to ask you
21 something which came up earlier on that very point. In
22 the Province of Quebec they communicate to the
23 Commission attending the workman or the employer's
24 physician any medical report relating to the accident and
25 I think you heard the discussion about that this
26 morning. I am wondering if you have any knowledge or
27 experience through your professional associations as to
28 how that works out in the Province of Quebec on this
29 very point.

30 DR. MELVIN: I have none as to how it



1 works in Quebec. The Ontario Medical Association has no
2 firm policy on what you propose. All I can say is that
3 in my personal estimation there would be no objection to
4 this at all. I would have no objection to my medical
5 reports being seen by another doctor, provided he doesn't
6 promptly hand them over to a patient, providing he
7 assesses them as a doctor and between us we release the
8 significant material.

9 MR. ESTEY: That is the next point.

10 DR. MELVIN: This is a personal opinion,
11 I want this put clearly on the record. This is what I
12 think and I cannot see how there could be much
13 objection to this because this would filter off the
14 extraneous information that might upset the patient and
15 is not contributing to the thing that might appear or
16 get into his hands that you might not wish him to have.

17 MR. ESTEY: Paragraph 21 on page 6 of
18 your brief, I want to just help you on that. You say
19 in the last sentence:

20 "then medical reports should
21 be privileged documents."

22 I take it by that you are saying subject, of course, to
23 indicating them to the other doctors concerned.

24 DR. MELVIN: Yes, and I am sorry I can't
25 help you with an Association decision on this point.
26 All I can give you is my own interpretation.

27 THE COMMISSIONER: You say you have no
28 objection provided it does not go further, but how are
29 you going to ensure that it doesn't go further? Are you
30 satisfied to rely upon your medical profession that it



Nethercut & Young

Toronto, Ontario

1 will not be allowed to go further?

2 DR. MELVIN: We would feel that there
3 is a better chance of another doctor taking out or
4 suggesting to his counsel not to use this information
5 than there would be from the layman.

6 THE COMMISSIONER: Well, suggesting to
7 his counsel not to use it, he has already disclosed it
8 to his counsel.

9 DR. MELVIN: I put that badly. What I
10 was trying to suggest there is that I issue a report and
11 the workman has a doctor and I don't see any objection to
12 the workman's doctor or the employer's doctor looking at
13 that report and then saying, "There is a certain amount
14 of stuff in here that would be useful and that is
15 contributing" without verbatim handing the whole thing
16 over. I could see why another doctor would be very
17 anxious not to have counsel produce certain information
18 in front of the client or the patient. In court we can
19 get out of this occasionally. I have done this in court
20 as a medical witness, asked the court if they would
21 exclude the plaintiff and this has usually been acceded
22 to.

23 MR. ESTEY: This is on the occasions
24 you have already mentioned where you have a neurotic or
25 something of that kind that you don't want him to hear
26 what you have to say?

27 DR. MELVIN: Well, if the man's injury
28 is such that he is not going to be able to walk again
29 and we are not going to be able to do so, I think it is
30 the worst possible thing in the world to tell him so



1 bluntly and baldly and yet legal fair-play demands that
2 you make that statement on his behalf, "This man will
3 never walk again", and he is finished economically. You
4 don't really mean this, you want to encourage him to
5 keep going, but to hear his doctor in front of him say
6 this to a court, then I submit you have done a very bad
7 thing to that patient.

8 MR. ESTEY: That is where the possibilities
9 are heavily against him walking again you don't help
10 him, but still there is a possibility he might overcome
11 it, so you are hurting him if you do tell him?

12 DR. MELVIN: There is always a chance,
13 "Let us learn to use a wheelchair and let us keep going,
14 let us not curl up in a corner and quit."

15 MR. ESTEY: So in a nutshell you do not
16 think that a report written out and sent to the Board
17 should be treated more or less as your evidence would be
18 in a damage action where the expert witness, the doctor
19 is in the witness box and is about to say something
20 which is against the interests of his client's medical
21 welfare, but remains a legal contest so you give it in
22 his absence?

23 DR. MELVIN: That is right.

24 MR. ESTEY: I only have one last topic
25 I would like to hear you talk about if you will. It
26 is only partly related to this, but I think you will be
27 able to talk about it and that is, this question that
28 flows from the fact that you have to make the doctor's
29 report, the doctor's report is the substratum or floor
30 on which the decision is ultimately made as to what kind



1 of compensation the man gets or on occasions whether he
2 gets it, but largely its quantum and duration. Is there
3 any real philosophical and practical problem flowing from
4 the fact that the doctor-patient relationship is strained
5 here by the intervention of this third party the Board
6 and this second purpose, do I make myself clear?

7 DR. MELVIN: Yes. This is a matter of
8 concern and of interest to the Medical Association because
9 we are very concerned about it and the thing that
10 puzzles us is that the public aren't. It concerns us
11 very much, this is not in the Compensation Board context
12 but some of the most peculiar forms are put on my desk
13 which patients ask me to fill out. I know perfectly
14 well if I fill it out he is going to lose his job and I
15 point this out to him that if I fill out this form he
16 will lose his job. He doesn't seem to care and this
17 bothers us. We would expect the public to be a little
18 more interested in what is going on and strangely enough
19 they seem to be very little concerned about what we tell
20 insurance companies just as long as they get a cheque.
21 This puzzles us and we are really far more concerned
22 about it than any other group, about this third party
23 and whether this is confidential information and so forth.
24 All I can say is that it concerns the doctors more than
25 it does the patients.

26 MR ESTEY: In the context of the
27 Compensation Board when you are asking a patient if he
28 has any prior history with this, does this raise a
29 conflict of interest and duty in you that you don't say
30 to the patient, "Now, what you say will be put down here



1 and read for and against you by some stranger"? Doesn't
2 this give rise to practical reporting problems?

3 DR. MELVIN: No, sir. If I get a
4 patient with a backache problem, let us stick to that,
5 and I say to him, "Have you ever had a backache before?",
6 and he invariably says, "Oh, no, nothing at all" I say,
7 "Now, before we go any further, are you sure, did you ever
8 tell a doctor about a backache, were you ever in hospital
9 and tell anybody about a backache? It doesn't matter if
10 you had a backache every day in your life and you hurt
11 yourself yesterday we take it from there." I make it
12 very clear to them that getting compensation for a
13 back injury does not extend to them proving they never
14 had one before. I am very careful to protect the patient
15 because some of them forget that they have had backache
16 and have told someone. Where you suddenly discover in
17 the middle of it, "I never had a backache in my life
18 except this thing that happened on Tuesday", and suddenly
19 they are telling you what chiropractors told them, so it
20 is obvious and you point out to them. Firstly I try and
21 ensure that the patient in his own interests is giving
22 a certifiably correct story and I will go back to him and
23 say, "What are you doing with chiropractors if you never
24 had a backache?". "Well, just a little thing", so I put
25 it down, "Has from time to time had a little twinge,
26 nothing approaching his present situation". This is my
27 approach to many of these people and I do it and many of
28 us do, to protect these people against their own
29 forgetfulness.

30 MR. ESTEY: I take it the Medical



1 Association position is that the doctor's report form is
2 acknowledged and known at the time you are making it out
3 to be the basis upon which the whole process of
4 adjudication is built. That is where you start.

5 DR. MELVIN: This would not be my
6 understanding of the form. It is filled out for the
7 basis of treatment and the adjudication about whether
8 the compensation is going to be responsible at all or
9 to what extent is based possibly in part on that, but
10 very largely on other evidence.

11 MR. ESTEY: You don't have that in mind
12 as a doctor when you fill out the report, you have in
13 mind the medical treatment.

14 DR. MELVIN: Yes, and you are also
15 trying to be sure there is an accurate accounting of what
16 goes on. For example, with a backache we try to get
17 the man to tell us exactly what happened. "What were
18 you lifting, how long have you had it?". We need this
19 information to support his claim, we can help him by
20 getting him to give us these complete facts.

21 MR. ESTEY: You get him to give you
22 that not to help the alternative treatments of the back,
23 but to help the man with the Board?

24 DR. MELVIN: Verify his case and also
25 to help the Board, so to that extent we are not trying
26 to adjudicate responsibility.

27 MR. ESTEY: But you don't make your
28 report with a view to protecting the fund, if I may use
29 that word, or assist the person to get something out of
30 the Board: You are doing it for the purpose of treating



1 the man and also assisting the Board if necessary.

2 DR. MELVIN: That is right, and
3 theoretically we should be totally unbiased which is
4 impossible in human life.

5 MR. ESTEY: Thank you very much, Doctor.

6 THE COMMISSIONER: Thank you, Doctor.
7 If you wish your associates to have something to say
8 after lunch, you can proceed on that basis.

9 We will adjourn now for one hour's
10 time.

11
12 ---At one o'clock p.m. the hearing adjourned until two
13 o'clock p.m.

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1 ---On resuming at two o'clock p.m.

2

3 THE COMMISSIONER: Have you finished, Dr.
4 Melvin?

5 DR. MELVIN: Yes, we wish to rest our
6 case on this point.

7 THE COMMISSIONER: Thank you, fine.

8 MR. ESTEY: Thank you very much, Doctor.

9 Mr. Commissioner, this morning in going
10 through the list of briefs which dealt with this appeal
11 question, the first item on our list of topics to be
12 discussed, I called upon only those who made an express
13 reference to the appeal procedure in their brief. The
14 Canadian Manufacturers' Association, however, have some
15 views on the appeal procedure which are obliquely
16 mentioned in some of their topics and one of their
17 gentlemen spoke to me today and asked if they might be
18 heard on this appeal procedure. With the Commissioner's
19 approval I would ask that the Canadian Manufacturers'
20 Association come forward now.

21 THE COMMISSIONER: It will be possible
22 if something turns up throughout these hearings which
23 you wish to make a further ---you can make written
24 submissions, in any event, at the end of the hearing if
25 there is something you want to add to what has been said
26 or something you want to say to elucidate what has been
27 said, but apart from that if there is anything which
28 you are able to contribute there is no reason it should
29 not be done as we are doing it now. If anyone has any
30 comment to make on a particular subject, that will be



1 fine.

2 MR. OLIVER: I am W. H. Oliver,
3 representing the Canadian Manufacturers' Association.

4 As we mentioned in our brief, we made
5 no comment about the appeal procedure of the Workmen's
6 Compensation Board, particularly in view of the changes
7 that have been made this year and we feel that in
8 principle the appeal procedures that have been outlined
9 to the Board are sound and really there has been no
10 opportunity to evaluate their effectiveness. We do feel,
11 however, that they should be given a fair trial and we
12 would prefer not to revert back to the previous method
13 of appeals with the Board and that the present method
14 should be allowed to persist for some time.

15 We have some concern, although no direct
16 experience, that between the review board and the Board
17 itself the evidence that has been submitted at one
18 level does not seem to be available to the Board and that
19 the Board considers the case starts off again from a
20 fresh start and it seems to us that the evidence on which
21 a decision has been based at one level should be made
22 according to the Board.

23 The only other question we have is that
24 we would support the idea that there would be a method
25 whereby you can appeal to the courts simply on a matter
26 of law relative to the Board's decisions.

27 Those are the only comments we have at
28 this time, sir.

29 MR. ESTEY: Mr. Oliver, what is the
30 incidence of employer participation in these appeals,



1 have you any idea?

2 MR. OLIVER: No, I can't really say.

3 As we mentioned in our brief on another subject which
4 comes, I think, under the definition of what is an
5 accident there is this consensus of area that an employer
6 who appeals a decision is concerned about his labour
7 relations impact by being in an appealing situation and
8 we are concerned more with the definition of an accident,
9 so we don't find ourselves in that position rather than
10 the appeal process itself.

11 MR. ESTEY: Then, on the other action
12 taken by the Board which affects the employer such as
13 assessment rating, allocation of a specific employer to
14 a class or a sub-class to a main class or in apportioning
15 the burden of the compensation payment between two
16 employers does the employer group take the position on
17 that that those decisions by the Board should be subject
18 to some kind of an appeal either within the Board or
19 outside the Board on behalf of the employer?

20 MR. OLIVER: I don't think we can take
21 an association position, but we certainly have discussed
22 this at lunch today and we recognize this problem.

23 We do feel, however, a decision has to be made at some
24 level and the most important thing about the Workmen's
25 Compensation Act and all of its operation that we see is
26 that it be a practical method of making sure that the
27 collective liability of the employer is taken into
28 account and that the employee who properly should be in
29 receipt of compensation gets it quickly, efficiently and
30 expeditiously, so anything we can do to make the wheels of



1 justice turn more quickly, the better off we are.

2 If we have a question of employers
3 appealing the Workmen's Compensation Board decisions as
4 to what assessment they should have, we can't see a great
5 number of these happening and this would interfere, we
6 feel, with what the Board's purpose is. So we feel that
7 the Board itself is able to make these decisions.

8 MR. ESTEY: To leave it to act as an
9 administrative body and not part of a greater operation
10 simply to appeal to somebody else.

11 MR. OLIVER: That is right.

12 MR. ESTEY: Thank you, Mr. Oliver.

13 The next brief with which we would like
14 to deal is that of the Ontario Mining Association. The
15 Association has, Mr. Commissioner, some difficulty in
16 the timetable and the availability of witnesses and I
17 suggest that perhaps they might speak to the Commissioner
18 about that and determine what we are going to do.

19 MR. PERRY: Mr. Chairman, my name is
20 Perry, I am the Executive Director of the Ontario Mining
21 Association. I was speaking to Mr. Estey earlier. We
22 had expected to support our brief with witnesses to speak
23 on the various aspects of it. Most of our witnesses, of
24 course, are closely associated with the mining industry
25 which is somewhat remote from Toronto. Some of them are
26 unable to be here or were unable to be here today and it
27 is not too certain how soon we can get all of them
28 together anywhere. However, one of the witnesses who we
29 asked to speak on the matter of appeals will be in Toronto
30 on Wednesday afternoon and I would like very much if he



1 could speak on that subject at that time.

2 THE COMMISSIONER: Speak on what?

3 MR. PERRY: Appeals.

4 THE COMMISSIONER: Well, we will still
5 be working this week, and if he is available I don't
6 think there will be any objection to hearing him.

7 MR. PERRY: I also planned on talking
8 about claims and adjudication. I have been in touch
9 with the man whom I felt would speak on this subject and
10 he can try to be in Toronto and I will know later on this
11 afternoon whether he can be on Friday morning.

12 THE COMMISSIONER: On what morning?

13 MR. PERRY: On Friday morning.

14 THE COMMISSIONER: We might not be
15 sitting on Friday morning.

16 MR. HESTY: We couldn't deal with them
17 both on Wednesday, I suppose?

18 MR. PERRY: Unfortunately, the Minister
19 of Labour is conducting ---

20 THE COMMISSIONER: Well, if we are
21 able --- I mean if we conclude the work that has been
22 assigned for this week earlier in the week we have other
23 work to do and we won't call a special hearing in order
24 to hear your witness on Friday morning, I would think.
25 So you will just have to do the best you can. It may
26 be necessary to put him at some future time when the
27 Board is sitting and we will still make a note of it in
28 connection with this matter that is being discussed
29 today, but I don't think I can promise any more than
30 that.



1 MR. PERRY: I can understand that. I
2 could speak on some of these subjects from hearsay, but
3 if I am asked to support it with detail or some case
4 history I am not competent on that point to dispose of
5 it, whereas these men I had in mind have been dealing
6 with these problems firsthand, and speak authoritatively
7 on their various aspects.

8 THE COMMISSIONER: Well, the only thing
9 I suggest is that on the matter of appeals you will
10 definitely have somebody here on Wednesday.

11 MR. PERRY: Yes, sir.

12 THE COMMISSIONER: It might be, you see,
13 that there are other people who are interested in this
14 particular thing who only want to come forth this one thing
15 and we can't keep calling these people back and forth
16 every time that somebody wants to deal with this
17 particular subject. If you can do that on Wednesday
18 and then you will have to let us know beforehand when
19 your other man is available and if that is the case we
20 will notify certainly some of the interested parties,
21 for instance, I imagine that some of the unions connected
22 with your work would be interested. We might try to
23 notify them.

24 MR. PERRY: Thank you, sir.

25 MR. ESTEY: Thank you, Mr. Perry.

26 Ontario Municipal Association. The
27 Ontario Provincial Conference of Bricklayers, Masons and
28 Plasterers. Provincial Building and Construction
29 Trades Council of Ontario. Provincial Federation of
30 Ontario Professional Fire Fighters.



1 MR. HOTHERSALL: Your lordship, Mr. Estey,
2 gentlemen, I am one of the groups that Mr. Estey referred
3 to this morning as desirous of returning to the good old
4 days. As a fire fighter I want to assure Mr. Estey that
5 we don't want to go as far back as the horses. I have
6 prepared quite a lengthy brief here and I am not fully
7 conversant with the Workmen's Compensation Board as such
8 and what I would like to do is read the brief in total
9 and then read a communication that I sent out to our
10 officers some time ago as a result of your attitude of
11 October the 16th.

12 THE COMMISSIONER: You can present it
13 in any way you see fit.

14 MR. HOTHERSALL: My name is Hotherersall,
15 Secretary of the Ontario Fire Fighters. I will start
16 with the introduction here, it is just a short one, but
17 the second paragraph of the introduction ties in with
18 the thing now. Have you a copy of our brief?

19 THE COMMISSIONER: I have a copy of it.

20 MR. HOTHERSALL: Introduction

12 21 The Provincial Federation of Ontario
22 Professional Fire Fighters wish to express their
23 appreciation of having the opportunity of presenting
24 this submission to you. As a Federation whose entire
25 membership, for all practical purposes, is covered by
26 the provisions of the Workmen's Compensation Act of
27 Ontario, we think that the general principles enunciated
28 by the Royal Commission setting the Act into operation,
29 were well founded, in that this is only the third time
30 the Act has been reviewed by a Royal Commission since the



1 commencement of the Act some 50 years ago. Neither of
2 the first two Royal Commissions were confronted with
3 briefs from either Labour or Management opposing the
4 adjudication system as was originally adopted by the
5 Ontario Legislature in 1914.

6 The absence of any complaints from the
7 employer or employee side as to the system of adjudication
8 as was in effect prior to 1965, is some evidence of the
9 lack of dissatisfaction in the Act itself. We are of the
10 opinion that the principle of the Act is good, in that
11 it purports to provide protection for the injured workman
12 without undue delay. It is considered, however, that
13 some revision is indicated to insure that the Act serves
14 the purposes for which it was intended and designed.

15 Appeal System
16

17 Our Federation is opposed to the new
18 system of appeals introduced by the Ontario Workmen's
19 Compensation Board in March, 1965. There is a general
20 feeling that the new system is needlessly complicated,
21 time consuming and introduces a degree of formality in
22 dealing with the Board.

23 It is our contention that this was
24 never contemplated by the designers of the Act initially
25 and against which warnings were sounded on each occasion
26 of review of the Act and its administration. It is our
27 submission that the introduction of the Appeal Tribunal
28 hearing involves great hardship for the workman and
29 almost invariably requires him to procure legal counsel
30 or other representation. There is a distinct "courtroom"



1 atmosphere with the new Appeal Tribunal, involving
2 summaries of evidence before the hearing. These contain
3 professional medical terms completely foreign to all but
4 qualified medical practitioners and most confusing to the
5 workman.

6 When the late Chief Justice Sir William
7 Meredith was drafting the Act he said one of the chief
8 purposes was to get rid of the "nuisance of litigation".
9 His Lordship envisaged a system free of legal
10 technicalities and formalities. His Lordship enunciated,
11 among others, one basic fundamental respecting workman's
12 compensation which we believe is worth repeating to this
13 Royal Commission, namely; that the Board should include
14 one who has a thorough knowledge of the problems of
15 working people and the hazards of industrial employment.

16 It is our contention that His Lordship's
17 wisdom and foresight has been abundantly demonstrated in
18 the years following the first Royal Commission report to
19 the Ontario Legislature. Until the recent amendment,
20 introducing the Appeal Tribunal, the Board was readily
21 accessible to the employers and the injured workman;
22 the employers, injured workman or his representative
23 having had ready access directly with the Board Members.
24 This we consider a basic and fundamental requirement, not
25 with the intention of influencing or altering decisions,
26 but rather to secure additional information respecting
27 Sections of the Act, or the facts of the case at hand,
28 to permit a proper decision as to whether or not a claim
29 is justified.

30 The Royal Commission respecting the



1 Workmen's Compensation Act by the Honourable Mr. Justice
2 W.D. Roach who reported to the Legislature in 1952,
3 studied in detail the Board's appeal procedure and the
4 need for availability of Board Members to employers,
5 injured workmen and their representatives. The following
6 is a direct quotation from this report which leaves no
7 doubt as to His Lordship's opinion in this respect.

8 "Labour and management dis-
9 agreed on other matters but they
10 were unanimous on this, namely,
11 that there should not be even a
12 limited right of appeal to the
13 courts. The Act has always
14 prohibited any appeals to the
15 courts and when, after thirty-five
16 years' experience in its operations,
17 these two groups, being the ones
18 most vitally interested in its
19 operation, are unanimous on this
20 question, it would be folly to
21 even think of making the suggested
22 change."

23 Both Mr. Justice Middleton and Mr.
24 Justice Roach examined this phase of the Board's
25 operations in a most critical manner, since representations
26 were made to both Commissions that "justice" was not
27 being done resulting in the rights of the workman being
28 jeopardized. It is considered something more than
29 significant that neither of these learned Justices saw
30 fit to recommend any change whatsoever in the existing



1 procedure.

2 Much publicity has been given to the new
3 appeal procedure as outlined by the Chairman of the Board.
4 He contends that this new system is necessary to ensure
5 that justice is done, that workmen know their rights and
6 the said new system will be much more efficient. In our
7 opinion this is directly contrary to the facts.

8 In the years prior to March, 1965 the
9 Claims Officer handling the initial adjudication of a
10 claim sized up the situation on the basis of reports
11 then in his possession and determined whether he felt
12 a clearer medical diagnosis should be obtained and if so
13 this was immediately referred to the Board's Medical
14 Department which made the necessary arrangements. If it
15 was considered there was a difference in medical opinion
16 of certified medical personnel of equal standing then
17 the file was forwarded to the appropriate Board division
18 for the appointment of a Medical Referee as provided
19 by the Statute. If the Medical Referee was of the
20 opinion that the conflict of opinions of the Medical
21 Personnel could not be readily resolved by mail or
22 telephone, he immediately ordered a local investigation
23 by a member of the Board's investigation staff. All of
24 these procedures were carried out within a matter of
25 days.

26 If, however, there was sufficient
27 information on the file to satisfy the Claims Officer
28 that the workman did not have entitlement under the Act,
29 then the file went immediately to a committee of three.
30 These were senior claims specialists with years of



1 experience with the Board who sat in review on the decision
2 of the claims adjudicating group.

3 This committee of highly skilled
4 personnel reviewed all aspects of the claim and if in
5 agreement that some further action should be taken to
6 ensure that a workman was not deprived of his entitlement
7 the claim was referred back to the Claims Adjudicating
8 Officer with directions for the further actions to be
9 carried out. If, however, they agreed that the evidence
10 clearly showed the workman did not have entitlement to
11 benefits, the claim went back to the initial adjudicating
12 officer to send out the appropriate notices. This was a
13 continuous file movement with the review in most cases
14 being conducted within a matter of hours after its
15 handling by the Claims Officer.

16 If the workman felt he had been unjustly
17 dealt with it was only necessary for him to write to the
18 Board requesting a review by the Board or its Committee.
19 The workman was advised and knew wherein his claim had
20 failed, whether on medical or non-medical grounds.

21 Under the present or new system the
22 Claims Adjudicating Officer must make his decision on the
23 basis of the information on the file at the time he
24 handles it. A written notice is then forwarded to the
25 workman advising him that he may appeal the decision if
26 he writes setting out his reasons to the Board's Review
27 Committee. After he has written to the Review Committee
28 and it has reviewed the file it must communicate its
29 decision to the workman in writing and advise him that he
30 may have a summary of evidence if he so desires and that



1 he may appeal to the Appeal Tribunal. Naturally the
2 workman must again write asking for a summary of evidence
3 because up until that time he has no idea why his claim
4 failed and specifically whether it did or did not come
5 within the provisions of the Act on medical or non-medical
6 grounds. He must the review this highly technical
7 medical summary, analyse it and consider his position and
8 attempt to set out his reasons for requesting a hearing
9 before the Board's Appeal Tribunal. His task is a
10 formidable one and he is completely unable to understand
11 why his claim was rejected or what he should do about it.

12 We would refer your Lordship to the type
13 of medical summaries sent to the workmen. These appear in
14 Hansard, June 20th, 1966.

15 "Examination of left lower
16 extremities reveals that he has
17 good quads. There is evidence of
18 slight weakness of the peroneal
19 muscles as well as dorsal flexors
20 of his foot and posterior tibial as
21 well. He has definite decrease
22 sensation particularly over the
23 medial aspect of the joint line
24 and distally where he had previous
25 skin grafts. He has decreased
26 sensation along the L5 distribution
27 and also along the S1 area. He
28 feels that this decrease in
29 sensation particularly over the
30 lateral part of this leg has



1 increased since the examination
2 by Dr.-- This is particularly true
3 to light touch, pin prick and deep
4 pressure. Vibration senses are all
5 active and equal.

6 "I feel that there is considerable
7 element of pain and weakness in his
8 left leg likely due to the original
9 trauma. This may be in the nature of
10 muscle weakness or causalgia which
11 is difficult to pinpoint or explain
12 objectively. There is an element
13 of low back strain with evidence
14 of pain along the sacroiliac joint
15 which could be possibly accounted
16 for due to previous injury.

17 "Having not seen this man
18 previously I do not know the extent
19 of increased numbness and peripheral
20 nerve root symptoms he is now
21 having as compared to his past
22 physical findings. He does have a
23 definite decrease sensation along
24 the L5 distribution and somewhat
25 in the S1 area. Decreased sensation
26 in the skin graft area and distally
27 is quite obvious.

28 "X-rays showed a large amount
29 of spurring of the lumbar vertebra.
30 The L5/S1 disc was thinned and the



1 IV foramina at this level were
2 congested. There were also
3 changes at L4/5. The spurring
4 occupied most of the lumbar spine.
5 A diagnosis of lumbo sacral strain
6 was made on the basis of old
7 degenerative disc disease, and
8 osteoarthritis of the spine."

9 If the Appeal Tribunal rejects a claim
10 after the hearing, the man must write asking for a copy
11 of the evidence of the hearing. If he is fortunate he
12 may be able to complete his first hearing within eight
13 to ten weeks following the accident. The workman is
14 certain the summaries are loaded against him, not only
15 because they are composed in highly technical medical
16 terms but because he feels they contain only the facts
17 which support the rejection of his claim.

18 It is to the Board's credit that since
19 1915 up to early in 1965 it carried on the administration
20 of the Act in an informal manner, devoid of legal
21 formalities and the workmen whether organized or
22 unorganized, knew their claims failed because of medical
23 or non-medical reasons. The workman also knew that a case
24 before the Ontario Workmen's Compensation Board was never
25 closed and could be reviewed by merely writing a letter
26 to the Board. In this connection it is appropriate to
27 reproduce an information sheet circulated by the Board
28 some number of years ago. Organized labour in Ontario
29 has taken very little issue with the program as set out
30 here.



- 1 1) No courts
- 2 2) No technicalities
- 3 3) No lawyers required unless the injured
- 4 workman himself desires such Counsel
- 5 4) No private insurance
- 6 5) No waivers
- 7 6) No assignments unless approved by the
- 8 Board
- 9 7) No closed cases
- 10 8) No protracted delays
- 11 9) No medical controversies
- 12 10) No limit to time or amount of compensa-
- 13 tion up to maximum annual salary
- 14 11) No limit to time or cost of medical aid
- 15 12) No failure of compensation because of
- 16 employer's default
- 17 13) No contributions by workmen
- 18 14) No adversary relationship between
- 19 employer and employee
- 20 15) No commissions
- 21 16) No profits

22 We have noted in Hansard, June 20th,
23 1966 that the Honourable H. L. Rowntree read a prepared
24 statement to the Legislature which went to some length
25 to quote Sir Guy Powles, Ombudsman for New Zealand and
26 Mr. Justice Tysoe of the British Columbia Court as
27 supporting the new system. Neither of these eminent
28 persons made any contact, to our knowledge, whatsoever
29 with any of the Labour Organizations in this Province.

30 They had at best an extremely limited



1 opportunity to examine or assess the system and presumably
2 were quite unaware and uninformed of the dissatisfaction
3 which was to manifest itself among Labour Organizations
4 respecting the new system.

5 Your lordship, we appeared here on
6 August the 16th and at that time we understood that
7 you would be hearing the briefs in toto in alphabetical
8 order.

9 THE COMMISSIONER: That was my then
10 intention.

11 MR. HOTHERSALL: I realize that, but
12 since you changed that I wrote a letter to our officers
13 of the Federation of Fire Fighters which I would like
14 to have read into the record. Now, I sent them a copy
15 of the brief, but I wrote this since you changed the
16 thing; in fact, immediately after I received the notice
17 on September the 15th. You sent a notice on September
18 the 14th that you had changed the type of hearing from
19 briefs to topics, so I wrote this the next day and sent
20 it to them and I would like this read into the record.

21 THE COMMISSIONER: What is the purport
22 of it, Mr. Hothersall?

23 MR. HOTHERSALL: Well, it advises our
24 reasons for opposing the appeal system and also gives
25 the reasons to our officers taking recourse to courts.

26 THE COMMISSIONER: I don't want to
27 exclude anything. In other words, it is a continuation
28 of your submission and your reasons?

29 MR. HOTHERSALL: Yes, it is.

30 THE COMMISSIONER: All right.



1 MR. HOTHERSALL: It is four pages.

2 THE COMMISSIONER: I don't want to
3 exclude anything that is relevant and if you are not
4 calling anyone on this I suppose it is relevant.

5 MR. HOTHERSALL: By way of an
6 explanation, your lordship, I wrote a letter to our
7 officers early in September sending them this brief.
8 When they changed it to subjects, then I wrote to them
9 explaining that you had changed from hearing the whole
10 brief to the subject and the subject matter here is
11 relevant to the situation at hand.

12 "On June 20th, 1966 the Provincial
13 Government, by order-in-council,
14 appointed The Honourable George
15 A. McGillvray a Justice of Appeal
16 of the Supreme Court of Ontario to
17 inquire into, report and make
18 recommendations concerning The
19 Workmen's Compensation Act on
20 subjects other than detailed
21 administration. Also incorporated
22 into the frame of reference is
23 'that said Commissioner shall have
24 the power of summoning any person
25 and requiring him to give evidence
26 on oath and produce such documents
27 and things as he deems requisite
28 for the full investigation'.

29 "The Provincial Federation of
30 Ontario Professional Fire Fighters



1 has prepared a Brief and have filed
2 it with Mr. Justice McGillvray a
3 copy of which is enclosed herewith
4 for your information.

5 "At the preliminary hearing
6 held August 16, 1966, it was
7 announced that organizations,
8 federations, associations, etc.,
9 submitting Briefs on the subject
10 matter, would be called before
11 the Royal Commissioner in an
12 alphabetical order. On September
13 14th, 1966 a Notice was posted
14 to the effect that hearings
15 before the Royal Commissioner
16 would resume on September 26th,
17 1966 and that 'It has now been
18 decided that all submissions
19 relating to a particular topic
20 will be considered at the same
21 hearing.'

22 "In this connection two of
23 the topics on which we wish to
24 speak will be taken up on this
25 date; Appeals on questions of
26 law to the courts and Administrative
27 appeals within the Board structure.

28 "The Federation is opposed to
29 the new Appeal Tribunal hearing
30 as well as appeals to the courts.



1 I will give a further explanation
2 for our position which does not
3 appear in the formal Brief.

4 "In March, 1965 a new system
5 of appeals was introduced at The
6 Workmen's Compensation Board for
7 the adjudication of rejected claims.
8 At that time the 'Appeal Tribunal'
9 was authorized and formed to hear
10 and pass judgment on claims for
11 compensation which had been
12 rejected by the Review Committee.

13 "It is our contention that the
14 'Appeal Tribunal' introduces a great
15 deal of formality which causes
16 delays. The workman is referred
17 to as the appellant, his trade union
18 representative as counsel and the
19 presence of a court reporter, the
20 swearing in of all parties, the
21 question of proper evidence, sub-
22 stantiates our opinion.

23 "The second basic reason we
24 oppose the introduction of the new
25 appeal system is that the three
26 Board Members (Chairman, Vice-
27 Chairman and Commissioner) are not
28 at liberty to discuss a rejected
29 claim with the workman or his
30 representative, on the basis that



1 this may cause some bias, on his
2 part, in the final adjudication of
3 the claim should it finally reach
4 the Board.

5 "The Workmen's Compensation
6 Board of Ontario is the only Board
7 of its kind in Canada where neither
8 the workman nor his representative
9 have direct access to the Board
10 for a discussion of a claims problem.
11 In the 50 years of operation of
12 the Workmen's Compensation Board
13 of Ontario, prior to the introduction
14 of the 'Appeals Tribunal', both
15 labour and management had the privilege
16 of discussing a rejected claim with
17 the Board Members. We have presumed
18 that this was a satisfactory
19 arrangement for both sides, inasmuch
20 as the question was never raised
21 officially by either side at the two
22 previous Royal Commissions of Inquiry
23 by Mr. Justice Middleton and Mr.
24 Justice Roach, into the operation
25 of the Act.

26 "The Federation is of the
27 opinion that the Members of the
28 Workmen's Compensation Board and
29 especially the labour appointee,
30 should be free to communicate with



1 the injured workman, his representative
2 or his employer on the matter of a
3 rejected claim.

4 "Subsequent to the Royal Commission
5 of Inquiry into the Manitoba Compensa-
6 tion Act (1958) by Mr. Justice
7 Turgeon, a full-time three-man
8 Commission was created. At that time
9 Premier Roblin insisted that
10 the prime requisite for the person
11 on the commission representing the
12 working people was that he be
13 available at all reasonable times
14 to meet with union leaders, any
15 representatives of injured workmen
16 and with injured workmen themselves
17 so the proper atmosphere could be
18 created for the administration of
19 the Act and to ensure the working
20 people of the Province that they
21 were not dealing with a bureaucracy.

22 "The Federation is of the
23 opinion that the Workman's
24 Compensation Board should have the
25 final say with respect to a rejected
26 claim, leaving no recourse for the
27 workman to appeal to the Courts.

28 "On February 17th, 1965, I wrote
29 to all Officers and affiliated Local
30 Unions stating in part; 'In



1 the province of Ontario, there has
2 been, from time to time, some agitation
3 to give the injured workman the right
4 to a further appeal through the
5 courts. This was to nullify what has
6 been termed as the 'arbitrary powers
7 of the Workmen's Compensation Board'.
8 The proponents of this argument claim
9 it is only fair and equitable that
10 the injured workman should have
11 recourse to the appeal procedure
12 provided by the law.' At this same
13 time I enclosed a speech a portion
14 of which the Daily Journal, Los
15 Angeles, California reported as
16 having been made by Ben Narvid when
17 he addressed the Hollywood Bar
18 Association. (Copy of Federation
19 letter and speech attached hereto)

20 "To further our views on this
21 matter I refer you to a report of the
22 Gordon Commission of 1959, when
23 they had this to say on page 76 of
24 their Report. 'We agree with the
25 findings of Mr. Justice Roach
26 following his inquiry into the
27 operations of the Workmen's Compen-
28 sation Act in 1950, that appeals to
29 courts should not be permitted'.

30 "Besides the inconvenience and



1 the loss of time, the amount of
2 money paid to the workman is
3 greatly reduced when you introduce
4 the right to sue through the courts
5 for compensation (litigation).

6 "It has been reported that
7 in the Province of Ontario the
8 workman receives approximately .90¢
9 out of every assessment dollar,
10 whereas in the United States the
11 average the injured workman receives
12 is in the neighbourhood of 45 cents
13 from the assessment dollar. The
14 litigious features of the American
15 jurisdictions are the prime reason
16 the workman gets so little from the
17 assessment dollar.

18 "*In the District of Columbia
19 the cost for legal services, if
20 approved by the Commission, becomes
21 a lien against the workman's award.

22 "*In Michigan the lawyer is
23 entitled to 25% of the award and it
24 becomes a lien against the award and
25 if the lawyer submits a bill in
26 excess of 25%, amount of the excess
27 must be approved by the Commission
28 before it becomes a lien against
29 the man's award.

30 "*In Mississippi, the legal fee



1 becomes a lien against the workman's
2 award. In this State the lawyer can
3 charge the workman only 25% of the
4 award. However, should the case
5 process through to the Superior Court
6 of the State, there is no limit on
7 the amount the attorney may charge,
8 and this becomes a lien against the
9 man's award.

10 "*In Maine, there are no limits
11 on what the attorney can charge.

12 "*In New York, providing the
13 Board approves the amount of the
14 lawyer's fee, it becomes a lien upon
15 the award.

16 "*In Maryland and Pennsylvania,
17 the attorney's fee becomes a lien
18 against the award of the workman.

19 "*In Tennessee, the fees are
20 subject to the approval of the
21 county judge or other court, and
22 are limited to 25% of the award to
23 the workman.

24 "*In Texas, the attorney can
25 charge a straight 15% of the award
26 and if the case is settled by a
27 court, then he is entitled to 30%
28 of the award.

29 "The foregoing are some of the
30 reasons the Provincial Federation of



1 Ontario Professional Fire Fighters
2 is opposed to any procedure which
3 would allow the workman the right
4 of appeal to the courts.

5 "Sincerely and fraternally yours,

6 "Ed Hothersall

7 "Secretary."

8 Now, if your lordship would bear with me for one minute
9 with respect to appeals to the courts the Federation, or
10 I myself, wrote to our affiliated locals that we were
11 opposed to any appeals to the courts. I won't read this,
12 but I took this cutting, if you have it, and I would like
13 to file it with you, sir, without having it read into
14 the record.

15 THE COMMISSIONER: Yes, you can do that.

16 MR. HOTHERSALL: I would just like to
17 read the letter into the record that I wrote on
18 February the 17th, 1965 just to show that we did not
19 just dream this up, our proposition to the appeals
20 procedure.

21 THE COMMISSIONER: Is this the thing
22 you were just asked to file?

23 MR. HOTHERSALL: I asked to file a
24 further one, sir.

25 THE SECRETARY: The quotes are referred
26 to in the letter, I think.

27 THE COMMISSIONER: Oh, yes, all right.

28 MR. HOTHERSALL: "I am enclosing a
29 reprint of a newspaper story which
30 appeared in the Los Angeles, California



1 Daily Journal on February 3rd, 1965
2 (Cir. D, 52,005)

3 "The speaker is a member of
4 the Industrial Accident Commission
5 and was addressing the Hollywood
6 Bar Association. It would appear
7 by the article that Mr. Narvid was
8 making three points for his audience.

9 i) That it is a lucrative practice
10 to represent injured workmen in
11 compensation claims before the
12 Commission.

13 ii) That recourse to the due
14 process of the law should be main-
15 tained for the workman, against a
16 suggested system of Workmen's
17 Compensation which would be unen-
18 cumbered and expeditious.

19 iii) How to get a client and the
20 pitfalls to guard against in some
21 claims.

22 "In the Province of Ontario,
23 there has been, from time to time,
24 some agitation to give the injured
25 workman the right to a further appeal
26 through the courts. This was to
27 nullify what has been termed as
28 the 'arbitrary powers of the Workmen's
29 Compensation Board'. The proponents
30 of this argument claim it is only



1 fair and equitable that the injured
2 workman should have recourse to the
3 appeal procedure provided by the law.

4 "The Workmen's Compensation Act
5 in the Province of Ontario is not
6 perfect, but, it is by far a better
7 piece of legislation than its counter-
8 part in a number of other jurisdictions
9 the Federation has examined. Despite
10 some of its inadequacies it does
11 provide, what it was designed to do;
12 maintain an income for the injured
13 workman.

14 "I bring this to your attention
15 with a view to giving you some
16 evidence as to the need for watching,
17 the adjudication aspect, of our
18 Workmen's Compensation Act, and the
19 need to maintain its general form.

20 "Fraternally yours,

21 "Ed Hothersall, Secretary."

22 That concludes our submission.

23 MR. ESTEY: Could you tell the
24 Commissioner so that we can have some idea of the
25 organization you are speaking on behalf of how many
26 members you have in the association?

27 MR. HOTHERSALL: We are a Federation
28 made up of 75 local unions. We have 5,400 members in
29 the Province of Ontario and I have presented this brief
30 on their behalf.



1 MR. ESTEY: Are you affiliated with the
2 Ontario Federation of Labour?

3 MR. HOTHERSALL: Yes, we are.

4 MR. ESTEY: You mention a couple of
5 things in your brief which I would like to get your
6 expanded views on perhaps. You mention in the opening
7 of the discussion about your appeals views that there
8 was apparently no expression of dissatisfaction with
9 the Act as it formerly stood. Would you tell us upon
10 what you base that statement?

11 MR. HOTHERSALL: I can just base it on
12 the representatives appearing before the Ontario
13 Federations and Labour Conventions.

14 THE COMMISSIONER: You were not included
15 in the Act prior to the previous investigation, were you?

16 MR. HOTHERSALL: Yes, we were.

17 THE COMMISSIONER: It was the volunteer
18 firemen.

19 MR. HOTHERSALL: Yes, the volunteer
20 firemen. Why I say that, Mr. Estey, is that the
21 delegates to the Ontario Federation convention brought
22 up several matters, but the general procedure, this
23 general appeal procedure was never challenged.

24 MR. ESTEY: That is what I wanted to
25 know. Then you say that the introduction of the appeal
26 procedure involves, to use your words, very great
27 hardship for the workman and so on. Can you expand upon
28 that and tell us the nature and the degree of the
29 hardship you have in mind?

30 MR. HOTHERSALL: I have very few cases



Nethercut & Young
Toronto, Ontario

1 to recall.

2 MR. ESTEY: It is not so much the cases,
3 it is the type of thing that you say results from this
4 appeal which in effect is a hardship on the workman.

5 MR. HOTHERSALL: In the first place, the
6 workman gets a summary of the evidence before the
7 review committee. To go before the appeal tribunal he
8 has to give some further evidence to get the case
9 before the appeal tribunal and it is just in this area ---

10 MR. ESTEY: That puts him to expense?

11 MR. HOTHERSALL: Well, he has to have
12 a representative.

13 THE COMMISSIONER: Is that correct that he
14 is only allowed to go before the appeal tribunal in the
15 event of new evidence?

16 MR. ESTEY: But the hardship there in
17 any event is expense?

18 MR. HOTHERSALL: Yes.

19 MR. ESTEY: And I suppose delay?

20 MR. HOTHERSALL: I only have two or
21 three cases I can recall, but there was some substantial
22 delay in two of them, trying to get a hearing before the
23 appeal tribunal. One started in April and they had the
24 hearing on the 3rd of September. Now, this is quite a
25 lengthy delay.

26 MR. ESTEY: Was there a re-examination
27 by doctors in the meantime?

28 MR. HOTHERSALL: There was, yes.

29 MR. ESTEY: Then on the question of
30 evidence we want to get your thoughts on this. On the



1 question of the evidence you say that one of the
2 problems is that the Board give the workman a summary of
3 the medical report and that this is written in medical
4 language and is very confusing and he doesn't understand
5 it and so on. Do you remember that on page 2 of your
6 brief?

7 MR. HOTHERSALL: I took that right out
8 of the Hansard transcript, the Hansard of June the 20th,
9 1966.

10 MR. ESTEY: Well, wherever you got it
11 from this is part of your brief and I just want to know
12 what you mean by it. What troubles me is this, that
13 the medical report which is confusing to the workman
14 and gives difficulty to him if he wishes to go on and
15 appeal is already in the record of the Board and
16 presumably is part of the reason why the Board did
17 whatever it did and that therefore the man is appealing
18 from this action, but I don't follow why the idea of
19 giving him an appeal is a bad thing just because he has
20 found out what the medical report is. Can you explain
21 that?

22 MR. HOTHERSALL: Well, we are of the
23 opinion that the way the Board functioned before seemed
24 to be better for our people generally than the appeal
25 tribunal as it now functions. We were quite satisfied
26 with the adjudication of the claims, we had very little
27 problems with it, and the only persons who were denied
28 compensation were those people who were not entitled
29 to it.

30 MR. ESTEY: Under the old system I take



1 it occasionally the workmen lost out.

2 MR. HOTHERSALL: The odd one, yes.

3 MR. ESTEY: And they lost out because
4 whoever reviewed their file read the medical report that
5 you are talking about and read the rest of the
6 circumstances and decided for some reason that
7 compensation should not be paid or should not be paid
8 in the volume that the workmen wanted.

9 MR. HOTHERSALL: Yes.

10 MR. ESTEY: Would you explain to the
11 Commissioner how that disagreeable situation viewed from
12 the workman's point of view was dealt with under the old
13 system to his satisfaction but is not dealt with to his
14 satisfaction under the new system?

15 MR. HOTHERSALL: Under the old system
16 the man knew he didn't have a right to an appeal. Under
17 the review committee they reviewed the claim and then,
18 of course, if you wished a further review you could get
19 a medical referee and then possibly take it right up to
20 the Board itself. But the man knew that once the Board
21 had rules on it, then he had no right of appeal. He
22 relied on the fairness of the Board to adjudicate the
23 cases as the Board saw fit and we were quite satisfied.
24 Now with the new appeals tribunal everybody wants to
25 appeal their case whether they are justified or not
26 because they are told that they have a right of appeal.
27 Everybody with a back injury --- and I will just take that
28 for an example --- feels that it was suffered in the
29 performance of their duties and the doctor says yes or
30 no, but now that they have the appeal tribunal they want



1 to go to the appeal tribunal and have their day in court.

2 THE COMMISSIONER: Is it because the
3 appeal tribunal is there, or is it because the Board now
4 makes a practice whenever they turn down a claim or
5 anything of the kind to say in the letter that goes back
6 to the man, "Of course, you have the right of appeal"?
7 Maybe that might account for it, the fact that the man is
8 notified in the letter what his rights are which he did
9 not always understand.

10 MR. HOTHERSALL: Fire fighters,
11 generally speaking, have it in their contract that we
12 have continuation of pay. We have good social legislation
13 written right into the contracts and we are not so
14 troubled with having appeals to the Workmen's Compensation
15 Board. If you can't get the appeal, you can get your
16 full pay anyway.

17 MR. ESTEY: So I take it the appeal
18 issue is not so vital in your brief compared to other
19 things you have got in there.

20 MR. HOTHERSALL: You are right.

21 MR. ESTEY: I want to get one idea from
22 you before we leave it. I take it that what you are
23 saying is that appeals have become too numerous, too
24 prolific because the appeal procedure is there and
25 announced, everybody knows they have the right, as you
26 say, and you say this invites appeals which otherwise
27 would not occur. Is this a fair summary of what you
28 said a moment ago?

29 MR. HOTHERSALL: Yes.

30 MR. ESTEY: What in your association's



1 view is the result or the evil or disadvantage to having
2 so many appeals?

3 MR. HOTHERSALL: This is a pretty tough
4 question for me to answer. I can't foresee what will be
5 the real result of it, but if the appeal tribunal keeps
6 expanding with more and more appeals, then naturally,
7 it is going to get more expensive, isn't it, for the
8 Workmen's Compensation Board?

9 MR. ESTEY: I was going to suggest to
10 you that maybe what you have in mind is whether or not
11 you have litigation in the ordinary sense you are going
12 to have expense and it comes out of the fund and less
13 money gets back to the workmen. That is your submission?

14 MR. HOTHERSALL: Yes, generally
15 speaking.

16 MR. ESTEY: Then before we leave would
17 you talk about the old appeal system and in something
18 you read to us if I heard you rightly under the old
19 method the informality which was appealing to your
20 association largely consisted of the right to go in and
21 talk to one of the members of the Board, particularly
22 the labour member, because he might be more conversant
23 with your problems and under this new system you don't
24 have that access.

25 MR. HOTHERSALL: That is right.

26 MR. ESTEY: Except on a formal basis.

27 MR. HOTHERSALL: Yes.

28 MR. ESTEY: That is really what you
29 are saying.

30 MR. HOTHERSALL: Yes.



1 MR. ESTEY: Just one last question, Mr.
2 Hothersall, so that I might understand you. You are
3 not saying that the new right of appeal is based or
4 predicated upon new evidence being available.

5 MR. HOTHERSALL: That is what I said,
6 yes.

7 MR. ESTEY: Do you say that is a good
8 thing or a bad thing, speaking aside for the moment from
9 whether it is accurate or not?

10 MR. HOTHERSALL: I will have to pass
11 that question. I know that appearing before the Board
12 the only way even under the old system you had to have
13 new evidence or some new information before the Board
14 members before you could get it appealed under the old
15 system. The same is applicable under the new system:
16 You have to have something added or some information
17 that the review committee did not know about to have a
18 successful appeal.

19 MR. ESTEY: You can get to the review
20 committee without new evidence, but you can't get beyond
21 it, that is what you are saying?

22 MR. HOTHERSALL: That is my
23 understanding, yes.

24 MR. ESTEY: And you pass the question
25 as to whether or not that is a good or bad thing?

26 MR. HOTHERSALL: The same thing occurred
27 under the old system, you had to have something new
28 that was not there before before you could get the
29 compensation claim awarded.

30 MR. ESTEY: I take it under the old



1 system you could find out what was in the medical reports
2 where you knew what you were talking about.

3 MR. HOTHERSALL: No, we did not have
4 the medical reports under the old system.

5 MR. ESTEY: Did the Board not let you
6 look at the complete file?

7 MR. HOTHERSALL: They would not let us
8 look at the complete file, but we would know whether it
9 failed either one way or the other, but the Board always
10 told us that the medical report was privileged and we
11 couldn't have a look at it.

12 MR. ESTEY: Were you told under the old
13 system why the man had failed, to use your words,
14 generally, in some kind of an outlined fashion did the
15 Board tell you why he didn't get it for so and so by
16 reason?

17 MR. HOTHERSALL: Generally, yes.

18 MR. ESTEY: You did know what you were
19 up against?

20 MR. HOTHERSALL: Yes.

21 THE COMMISSIONER: I suppose with this
22 great volume increase that occurred and with all its
23 other duties including its duties of sitting on formal
24 appeals one of the main difficulties has been with the
25 member of the Board who has been called upon to talk
26 directly with somebody about all these individual claims.
27 I am sure you recognize that that is maybe one of the
28 problems that has given rise to this changed system.

29 MR. HOTHERSALL: Yes.

30 THE COMMISSIONER: So I have been told,



1 so I have read in the literature the Board produces. I
2 would like to ask Mr. Kerr of the Workmen's Compensation
3 Board what is the situation with regard to appeals from
4 the review committee. Is it necessary to have new
5 evidence in order to be heard?

6 MR. KERR: Mr. Commissioner, it is not
7 necessary to have new evidence to appeal your claim from
8 the review committee to the appeal tribunal. It may be
9 a look at existing evidence without the presence of new
10 evidence.

11 THE COMMISSIONER: Well, the letter that
12 goes out to the claimant does not state that it will only
13 be heard upon production of new evidence.

14 MR. KERR: No, sir, it does not make
15 that statement.

16 MR. ESTEY: I take it it invites him to
17 send in new evidence if he has any.

18 MR. KERR: He is invited to state his
19 reasons and give any further information he has, but
20 there is no restriction on the basis of new evidence.

21 THE COMMISSIONER: Well, maybe that
22 question of being asked to send in further evidence
23 might have led to a misunderstanding.

24 MR. HOTHERSALL: It was my understanding
25 and I could have taken it to mean that to succeed in the
26 appeal tribunal you had to introduce new evidence which
27 the review committee did not have and I might have been
28 labouring under this misconception rather than having to
29 present new evidence.

30 THE COMMISSIONER: Thank you very much.



1 MR. ESTEY: Thankyou, Mr. Hothersall.

2 MR. HOTHERSALL: Sorry to have taken so
3 much of your time.

4 THE COMMISSIONER: That is what we are
5 here for.

6 MR. ESTEY: Rio Algom Mines Limited.

7 MR. YOURT: Your lordship, ladies and
8 gentlemen, I think I will take probably less time if I
9 read directly.

10 THE COMMISSIONER: I think it would
11 probably work out that way with most of these if you
12 read in the submission.

13 MR. YOURT: The opportunity to present
14 a submission to you is appreciated.

15 Firstly, we strongly support the
16 submission made to you on August 16, 1966 by the Ontario
17 Mining Association.

18 We also, just to elaborate on this,
19 support the submission made this morning towards a
20 different type of hearing wherein someone asks the
21 questions to bring out the facts rather than the
22 employee against employer.

23 Secondly, we pinpoint herein three
24 problem areas regarding provisions in the Workmen's
25 Compensation Act, namely:

- 26 1. Interpretation of an accident
- 27 2. Reporting of an accident
- 28 3. Waiting period

29 Interpretation of an Accident - Section 1. - (1)

30 The addition of Clause (iii) to Section 1 (1) which
reads :



1 "In this Act 'accident' includes
2 disablement arising out of and in
3 the course of employment"

4 has, according to our experience, encouraged some workmen
5 to expect compensation for disabilities which are not
6 primarily caused, but merely become apparent, at work.
7 This applies when the disability is associated with a
8 physical exertion similar to activities commonly
9 occurring off the job. Furthermore, this misconception
10 has been more firmly established by certain adjudications
11 made since the clause was introduced. A specific
12 example will serve to illustrate the point.

13 A carpenter while carrying tools up a
14 stairway, in June 1964, experienced a pain in his chest
15 which was later diagnosed as a heart condition. It was
16 considered a non-occupational disability by the attending
17 physician. Sickness insurance benefits from a
18 contributory plan were applied for and paid at \$50 per
19 week up to a total of \$1057 over a period of 5 months
20 even though the mine closed its regular operations at the
21 end of August. In the meantime a claim was filed for
22 compensation. The Board's decision, following
23 consideration by the Review Committee, is quoted below.

24 "Following a complete investigation
25 in connection with your claim, a
26 complete review was made at high level
27 and your claim has been allowed for
28 the acute episode of your disability
29 and this completes your entitlement
30 under the Act"



1 Compensation payments were made
2 accordingly to the latter part of November 1964 and amount-
3 ed to \$1431. Insurance benefits were not refunded.
4 Therefore the claimant received a total of almost \$2500
5 over a period of 5 months. In August 1965, some months
6 after the announcement of the Board's new Appeal
7 Structure, the claimant's union appealed for an extension
8 of benefits and a hearing before the Appeal Tribunal was
9 held in October, 1965.

10 The union representative claimed that
11 the workman's heart condition was caused on the job and
12 that there was no pre-existing condition; this was
13 supported by a statement signed by the attending physician
14 as follows:

15 "This is to certify that the above
16 was not treated before June of 1964
17 for chest pains or symptoms of heart
18 disease nor has he complained of
19 similar pain during the years he
20 attended the ...Clinic since July
21 of 1958".

22 The company representative established, and the claimant
23 admitted, extensive off the job work involving long
24 hours, mainly delivery of eggs to householders in the
25 community of Elliot Lake and surrounding mine townsites
26 and occasionally moving furniture with his truck. This
27 took place over a period of 6 years previous to his
28 disablement in June 1964. In addition he operated a
29 farm with the help of his family and travelled back and
30 forth weekends, a distance of 143 miles each way.



1 A member of the Appeal Tribunal pointed
2 out that the claim was allowed "for the acute episode"
3 following a report on an examination by an "Independent
4 Specialist" and further that "there was quite a good
5 deal of head scratching before the claim was allowed at
6 all...because there haven't been any real severe or
7 extraordinary stress associates".

8 The company representative indicated
9 "that the Board was most generous in its allowance of
10 this Claim...up until November, 1964 and that no further
11 payment should be made after that date".

12 The Appeal Tribunal's decision reads in
13 part as follows:

14 "On consideration of all the evidence
15 including the transcript, the Appeal
16 Tribunal is of the opinion that no
17 causal connection has been shown
18 between the claimant's employment on
19 or about June, 1964, and the
20 disability which became manifested
21 at that date.

22 "The Appeal Tribunal is of the
23 opinion that this is not an allowable
24 claim under the terms of the Act and,
25 therefore, must reject the claim.
26 However, in consideration of all the
27 circumstances, the Appeal Tribunal
28 orders that no refund be demanded".

29 This decision was deemed fair by the Company but it was
30 appealed by the claimant and a hearing was held in January



1 1966 before the Board. In spite of the workman's
2 statement, supported by his attending physician that
3 there was no evidence of a pre-existing heart condition
4 prior to his disability in June, 1964, the Board's top
5 officials, constituting the final stage of appeal,
6 ruled that the claimant

7 "has a pre-existing heart condition
8 which was aggravated...June, 1964
9 during the course of his employment".

10 and extended compensation benefits. This example
11 illustrates the dilemma in which the Board's staff is
12 placed in endeavouring to interpret Clause (iii). This
13 type of decision, or reversal of an earlier decision
14 introduces a number of undesirable aspects, namely it:

15 1. Does not comply with the
16 Board's own interpretation of Clause (iii) as described
17 by Mr. G. S. Black in the April, 1966 issue of the
18 Board's News Bulletin and quoted below, in that there
19 was no sudden or unusual exertion.

20 "Entitlement, however, under this
21 Amendment requires that the disable-
22 ment which a workman suffers must have
23 some causal relationship with the
24 work being performed. It is not
25 sufficient that the disablement
26 comes on during work; rather, there
27 must be something about the work
28 which can be considered to have
29 caused the disablement. The cause
30 might be strenuous work, awkward



1 position, unaccustomed strain or
2 even a movement arising out of the
3 work which is reasonable to consider
4 may have caused the disablement."

5 2. Casts a reflection on the
6 judgment of the Claims Department, the Review Committee,
7 and the Appeal Tribunal.

8 3. Puts the attending
9 physician in an untenable position in regard to doctor-
10 patient relationship because he had not indicated the
11 disability as occupational.

12 4. Undermines the accident
13 prevention efforts of the employer and his staff and the
14 majority of workmen who are sincerely endeavouring to
15 prevent accidents. The occurrence of a compensable
16 disability with no apparent reason destroys the
17 motivation to work safely. How could a supervisor
18 anticipate or prevent such a manifestation of disablement
19 without knowledge of a pre-existing condition?

20 5. Discourages employers
21 from providing suitable employment to workmen with
22 inherent or pre-existing disabilities and seriously
23 hampers rehabilitation of those injured on the job.

24 Employers, in cooperation with
25 conscientious disabled workmen, have demonstrated their
26 willingness to provide employment for them. This policy
27 adds greatly to the productivity of the nation and should
28 not be discouraged by imposing on employers an unjust
29 share of the cost of disablement not caused on the job.

30 6. Increases the temptation



1 for some workmen with inherent disabilities or disabilities
2 suffered off the job to report them as having occurred
3 at work. We submit:

4 1. That Clause (iii) has
5 introduced too much of a tendency for decisions to be
6 influenced by sympathy for a disabled workman rather
7 than strictly by a causal relationship with his actual
8 exertion when the disability was experienced.

9 2. That Clause (iii) is
10 unnecessary because causal relationship can be adequately
11 established under Clauses (i) and (ii) of Section 1.
12 (1) (a) and Section 3. - (2).

13 Therefore it is recommended:

14 1. That Clause (iii) be
15 eliminated.

16 2. That the cost of benefits
17 for disabilities of workmen not "arising out of and in
18 the course of employment" be covered by social legislation.
19 Such an arrangement probably would:

20 1. Eliminate human tendency
21 of adjudicators to stretch the benefit of doubt in favour
22 of the injured workman into the realm of social security.

23 2. Reduce temptation of some
24 workmen to seek compensation for inherent disabilities
25 from Board funds.

26 3. Alleviate the workload of
27 the Board's staff, particularly those serving on Tribunal
28 Appeal and Board hearings because many appeal cases
29 appear to be on the borderline between occupational and
30 non-occupational disabilities.



4. Remove many of the frustrations experienced by management and supervisors in their efforts to prevent injuries and to rehabilitate and employ partially-disabled workmen.

5. Alleviate the embarrassing
in
situations/which the attending physicians find themselves
when they, in borderline cases, find a disability to be
of non-occupational origin but the workman believes it
to be occupational.

Reporting an Accident - Section 21 - (1) & (5)

Prompt and accurate reporting of an injury or condition associated with a disability, is very essential to effective investigation of an accident, prevention of further injuries and proper adjudication of claims.

MR. ESTEY: You see, down in Section 4
you are talking about appeals.

MR. YOURT: But in this first section here I quote an example to illustrate the interpretation of an accident causes problems. Is that okay?

MR. ESTEY: I don't like to interrupt you because, as the Commissioner said, we are here to hear all things, but we are dealing this afternoon, as you know, with appeal procedures and that includes appeals to courts, appeals within the Board, and what documents and evidence will be available to the employee or the workman for the purpose of those two kinds of appeal, and on page 6 I notice that you had a comment and that is why I included you in the index dealing with



1 the limitation period and then, as you set out in the
2 start, you do submit the submissions by the Mining
3 Association and by others today in connection with appeal
4 procedures.

5 MR. YOURT: I misunderstood that you
6 were going on to the next section.

7 MR. ESTEY: Not yet.

8 MR. YOURT: Then shall I read page 6 ---

9 These objectives are seriously hampered
10 if an accident is not reported before a workman leaves
11 the employer's premises. Furthermore permissiveness on the
12 part of the Board towards late reporting facilitates
13 the filing of claims for disabilities caused off the
14 job.

15 Therefore it is recommended:

16 1. That the following clauses in
17 Section 21. - (1) be more strictly enforced by the Board

18 "compensation...is not payable
19 unless notice of accident is given
20 as soon as practicable after the
21 happening of it and before the
22 workman has voluntarily left the
23 employment in which he was injured".

24 2. That subsection (5) be either
25 eliminated or at least reworded so that it does not
26 unduly negate the pertinent clauses in subsection (1)
27 quoted above.

28 3. That statements made by the injured
29 man, witnesses and all others concerned, immediately
30 or within several days following an accident be given



1 prime credence by the Board in all stages of adjudication.
2 This should be in preference to verbal and often
3 dramatized versions of conditions surrounding an
4 accident made from memory at appeal hearings sometimes
5 years later.

6 THE COMMISSIONER: What part are you
7 reading from?

8 MR. YOURT: Page 6. That is, years
9 after the accident happened.

10 4. That a time limit of three months
11 be set for accepting appeals from Board decisions and
12 that appeals be granted only after new evidence is
13 presented to the Board. That is as much as you wish?

14 MR. ESTEY: I think from there on you
15 deal with something else, Mr. Yourt. I was wondering
16 on this question of your appeal submission there are
17 some things I would like to question you on. One is
18 can you tell me how many employees Rio Algom Mines and
19 its affiliated companies would have covered by the
20 Workmen's Compensation Act of this province?

21 MR. YOURT: Oh, somewhere in the
22 order of 1,000.

23 MR. ESTEY: Does your company have
24 occasion to contest the Board awards of compensation or
25 policy decisions very frequently?

26 MR. YOURT: We do not find it necessary
27 to contest the Board's findings frequently. We do sit
28 on appeal hearings, a number of hearings we have of
29 rejected cases on appeals dating back as far as 1957,
30 and there were a fair number of those.



1 MR. ESTEY: You sit in on them because
2 the company in your experience produced more material ---
3 I don't like the formal word "evidence" --- produced
4 more material for the appeal tribunal or the Board
5 itself to examine on those contested appeals?

6 MR. YOURT: If during a proceeding
7 we feel we can add to the facts already given, we do so
8 upon request or if we feel that there is a dearth of
9 evidence we try to call attention of the Board to this.
10 In this respect we do find a great deal of variation
11 between the early ---- and this is the point I make ---
12 the earlier written evidence at the time of an accident
13 and the verbal presentations made in some cases years
14 later.

15 MR. ESTEY: What I am getting at, I
16 wanted to bring you to that because that is obviously
17 one of your main points, but before we get that far I
18 just wanted to find out from your experience, because
19 you are the first one here today who has said "I have
20 been down on these things and this is what happens".
21 Prior to March, 1965, did you attend any internal
22 review of these rejections by the Board?

23 MR. YOURT: Rarely, I would say.

24 MR. ESTEY: Would you get notice of them,
25 would you know it was going on?

26 MR. YOURT: By notice of the decision.

27 MR. ESTEY: Would you be aware, for
28 example, back before March, 1965 that one of your miners
29 had been rejected in a claim for compensation, but that
30 his case was going to be re-examined by the Board?



1 MR. YOURT: Yes, we were usually told
2 that it would be investigated by a local investigator
3 and that the case would be reviewed by a review board or
4 a review committee.

5 MR. ESTEY: And under that regime were
6 you invited to attend at that re-hearing?

7 MR. YOURT: To my knowledge not. I
8 didn't attend any of them.

9 MR. ESTEY: And after March, 1965 you
10 have told us that you had occasion to attend when the
11 different appellant levels of the Board are dealing with
12 this miner's claim?

13 MR. YOURT: Yes, that is right.

14 MR. ESTEY: On those occasions are you
15 invited by the Board officers to participate in the
16 hearing?

17 MR. YOURT: Yes, we are amply advised
18 and given an opportunity to participate, to be
19 represented.

20 MR. ESTEY: And when the hearing starts
21 or whatever it is in a room down at the Board's offices
22 do you have a rotation where it becomes the company's
23 turn to make submissions or say something?

24 MR. YOURT: Yes, we are given plenty of
25 opportunity there to make submissions.

26 MR. ESTEY: You are called on to be
27 heard?

28 MR. YOURT: Yes.

29 MR. ESTEY: And on occasion do you bring
30 witnesses or superintendents?



1 MR. YOURT: We have on occasion, yes.

2 MR. ESTEY: When you do that is it the
3 Board's practice that the people you put forward are
4 examined or questioned by someone who sits there on
5 behalf of the Board or the workman?

6 MR. YOURT: That is right.

7 MR. ESTEY: Usually does the workman's
8 representative get a chance to ask questions of the
9 people that you bring down?

10 MR. YOURT: Right.

11 MR. ESTEY: And does the company ever
12 submit any questions to the workman and his witnesses?

13 MR. YOURT: We do on occasion, but there
14 arises an embarrassing situation. We refrain from doing
15 so unless there is a very serious, let us say,
16 misrepresentation.

17 MR. ESTEY: If you think an error is
18 going to be made you intervene?

19 MR. YOURT: Yes, but even under those
20 circumstances we often let it go because we don't like
21 to be in the position of fighting against our employees.

22 MR. ESTEY: You don't think the adversary
23 system has anything to offer in this proceeding?

24 MR. YOURT: No, we do not.

25 MR. ESTEY: That is why you said a
26 moment ago when you opened here today that you felt or
27 your company feels that the best system is to have some
28 neutral officer of the Board, as it were, examine all
29 the witnesses on behalf of everyone, is that what you
30 are saying?



1 MR. YOURT: That is right. I would
2 like to probably elaborate a little bit more. I follow
3 these cases very closely, and I feel that the onus is
4 on the Board members to bring out all the facts before
5 decisions are made and we feel that those facts should
6 be brought out before it reaches the stage of, let us
7 say, a tribunal hearing so that we don't feel that it
8 should be left for us to, for example, argue in front of
9 the employee and say, "You didn't say that two years
10 ago, you said this".

11 MR. ESTEY: You don't do that?

12 MR. YOURT: No, that is an embarrassing
13 situation.

14 MR. ESTEY: And I take it you think
15 that an employer should not play that role?

16 MR. YOURT: No, that is right. I feel
17 that if the facts are all brought out on the stage of
18 the review committee that there should be very few cases
19 reach the tribunal hearing rather than the rash we have
20 had in the last few years.

21 MR. ESTEY: Why do you think you have
22 had the rash in the last few years?

23 MR. YOURT: Well, the wording has invited
24 that.

25 MR. ESTEY: The wording of the notice
26 to you?

27 MR. YOURT: Yes, and to the employee.

28 MR. ESTEY: Mr. Kerr, could we get one
29 of those notices tomorrow?

30 MR. KERR: Yes.



1 MR. YOURT: I think this was confirmed
2 by the previous speaker.

3 MR. ESTEY: Yes, it was. I take it what
4 you are saying is --- we are seeking your ideas, not mine
5 --- this rash or abundance of appeals now is not
6 necessarily attributable to having the right of appeal,
7 but it is the method in which the workman is acquainted
8 with his right of appeal that you have a lot of them.

9 MR. YOURT: Yes, and it brings out
10 cases dating as far back as 1957 where the hearing of
11 their 1957 injury, say, last year there is no resemblance
12 of the story that was told immediately after the
13 accident happened. It is a verbal interpretation and our
14 memories are poor as far as years go. It is only human.

15 MR. ESTEY: That is right, it is
16 unfortunately only human. Do you think it is necessary
17 or advisable to have the middle layer of appeal, the
18 appeal tribunal in addition to the lower review
19 committee and the final appeal by the Board itself?

20 MR. YOURT: At the moment I have some
21 doubts whether that need is there. I would go along with
22 the further trial but I feel more strongly that all the
23 facts should be brought out at the stage of the review
24 committee, and in this respect I believe the local
25 investigations could be somewhat more thorough by
26 contacting all parties concerned, employee and employer,
27 witnesses and the medical people. That is done to a great
28 extent, but if all the facts are brought out there and
29 documented with the facts that are brought out immediately
30 after the injury, where is there much room for further



1 evidence to be brought out?

2 MR. ESTEY: I take it what you are
3 saying is that if the parties all knew including the
4 Board officials that the review committee was the main
5 stage of appeal that emphasis would be put on or effort
6 would be put into that appeal and most of the cases
7 would be disposed of at that level and you would not
8 need the expense of a further tribunal.

9 MR. YOURT: That is right and I think
10 the Board would have more time to decide on some of the
11 more difficult ones. I think it is also our experience
12 that some of the cases that reach the Board level they
13 just haven't got the time to go over all the evidence
14 that was brought out even in the tribunal.

15 MR. ESTEY: There are too many cases
16 in the pipeline which results in the important cases not
17 getting an adequate amount of time.

18 MR. YOURT: And I believe the decisions
19 reflect that. In our experience when it reaches the
20 Board level it is just another opportunity to give the
21 employee just a little bit more benefit of a doubt on
22 his new evidence, from our experience.

23 MR. ESTEY: And does your company
24 participate in response to the notice from the Board
25 that the case is going to come before the review
26 committee?

27 MR. YOURT: In that case there have been
28 very few in that stage. There are very few in that
29 stage.

30 MR. ESTEY: That notice to you that the



1 matter has been rejected once and is going to the review
2 committee, does that notice invite the employer to send
3 in further information?

4 MR. YOURT: Not that I recollect, but I
5 may be wrong. There have been so few cases there that I
6 would have to check back.

7 MR. ESTEY: So few cases that have
8 gone to the committee?

9 MR. YOURT: Yes.

10 MR. ESTEY: That is the first level of
11 appeal.

12 MR. YOURT: Yes, but then we are advised
13 when it goes from review to the committee.

14 MR. ESTEY: But you are not advised of
15 all the cases before they go to the review committee?

16 MR. YOURT: Subject to correction, I
17 doubt that we are.

18 MR. ESTEY: Well, we can find that out.
19 We are really more concerned with your ideas here than
20 what the facts may be. Now, just to move into something
21 else that we heard about today and I think you were here
22 this morning.

23 MR. YOURT: Yes.

24 MR. ESTEY: The question comes up as to
25 how much the employer and employee should be made aware
26 of from the Board files in preparation for and during
27 the final two stages of appeal, do you remember that?

28 MR. YOURT: Yes.

29 MR. ESTEY: In practice what does the
30 employer get before the appeal tribunal stage?



1 MR. YOURT: He doesn't get anything.

2 MR. ESTEY: What do you receive by way
3 of a summary of the case at the appeal tribunal stage?

4 MR. YOURT: I would say we have not
5 received any, but maybe it is because we have not asked
6 for it.

7 MR. ESTEY: Nobody volunteers it to you?

8 MR. YOURT: No.

9 MR. ESTEY: Are you told that you can't
10 have this summary?

11 MR. YOURT: We have learned that we
12 can't have it, yes, and we have obtained it more
13 recently.

14 MR. ESTEY: Are those summaries helpful
15 to you?

16 MR. YOURT: Yes, I believe in my
17 estimation the ones I have reviewed are very well done
18 and very helpful. They are concise and to the point, and
19 we are reasonably happy with them.

20 MR. ESTEY: Are you in a position to
21 tell the Commission whether in your opinion --- and I
22 use the word including your company --- that those
23 summaries should be replaced by turning over to you or
24 making available to you the complete file including
25 the doctor's reports?

26 MR. YOURT: I would like to qualify
27 the part that I do not feel we ought to have anything
28 that is not bearing directly on the injury before the
29 tribunal in that case. I would agree with the gentleman
30 from the medical fraternity, where certain evidence



1 should not be disclosed, but that directly if the review
2 is not sufficient and there is more information that
3 deals directly with the injury, then I would not like to
4 say we should not have it. There might be cases where
5 we should have it.

6 MR. ESTEY: You would be content, I
7 take it, to leave it to the discretion of the Board as
8 to whether or not you are entitled to the whole of the
9 report or just the immediate medical report on the
10 injury?

11 MR. YOURT: Right.

12 MR. ESTEY: What is your view as to
13 whether there should be a further appeal from the Board
14 on some limited questions, the courts have been suggested
15 in the cases of questions of law.

16 MR. YOURT: I am not qualified to
17 answer that, I am sorry.

18 MR. ESTEY: You have expressed no view
19 in your report and you do not wish to do so now?

20 MR. YOURT: No.

21 MR. ESTEY: Does your company employ any
22 doctors?

23 MR. YOURT: No, we have arrangements for
24 pre-employment service, but we do not as such employ
25 doctors.

26 MR. ESTEY: I take it you don't operate
27 a hospital at any of your mines.

28 MR. YOURT: No, we don't.

29 MR. ESTEY: And your injured workmen in
30 the first instance then pick their own doctor from the



1 neighbourhood once the injury occurs?

2 MR. YOURT: That is right, his own choice.

3 MR. ESTEY: And you have no difficulties
4 to report to this Commission in connection with the
5 selection of doctors or availability of the reports,
6 you have had no difficulty?

7 MR. YOURT: I am not quite sure what you
8 mean by "availability of reports". We don't get the
9 medical reports.

10 MR. ESTEY: You don't have any trouble
11 getting your workmen to file their claims in time or
12 getting their medical advisors to make their applications?

13 MR. YOURT: Well, filing the claim in
14 time or reporting it we do have difficulties there.

15 MR. ESTEY: I will come to that. I am
16 doing what I accused you of, getting onto something else.
17 Dealing with the appeal, then, I take it, that in your
18 view the present system should be tried out for a while,
19 but you have mental reservations about the need for this
20 third level of appeal.

21 MR. YOURT: Yes, I do. As I said, I
22 would like to see more emphasis on the review stage and
23 leave any further boards to decide the very difficult
24 borderline cases.

25 MR. ESTEY: Finally, you believe that
26 this proliferation of appeals might be reduced if the
27 method of reporting the decision to the man and the
28 invitation to appeal were perhaps worded differently
29 than they are now worded?

30 MR. YOURT: Yes, and one way of reducing

1 it is to require additional evidence. Then what is the
2 purpose of another hearing unless there is further
3 evidence? We have full faith in the ability of the
4 review committee to make a decision if the evidence is
5 there.

6 MR. ESTEY: Thank you, Mr. Yourt.

7 THE COMMISSIONER: Thank you.

8 We will adjourn for five minutes.

9
10 ---Short recess.

11
12 MR. ESTEY: The next order of business
13 concerns the United Steelworkers . There is some problem
14 with their representative today having to attend
15 negotiations in the City of Ottawa. I don't see him
16 present. I take it there is no one here from the
17 Steelworkers this afternoon.

18 That, Mr. Chairman, concludes the
19 briefs of which I have notice that deal with the
20 question of right of appeal and appeal procedures. If
21 there is anyone whom I have missed, would they kindly
22 speak up now before we move on to something else. We
23 are not going to leave the problem, but I don't want to
24 cut anyone off who has not been heard on appeal
25 procedure. I take it nobody wishes to add anything,
26 perhaps on points raised by someone else.

27 If not, before we read into the record
28 a number of submissions not here represented today by
29 oral evidence we have a timing problem as to the next
30 topic, claims adjudication. A number of you have asked



1 us when we are going to get to that. We are going to
2 deal with that as soon as we finish appeal procedure.
3 We should reach that by tomorrow morning at the latest,
4 maybe late this afternoon. However, the Ontario Medical
5 Association have one of their specialists available now
6 and by reason of his practising difficulties he will not
7 be available tomorrow and, Mr. Commissioner, I would
8 like to have the O.M.A. present their remarks with
9 reference to accidents arising out of and in the
10 course of employment.

11 DR. BARNARD: Dr. Barnard, St.
12 Catharines, your lordship. In our brief, Section 34,
13 on page 10 we describe some of our concern about the
14 interpretation of the word "accident" in the present Act
15 since its revision in 1963. I won't read this unless
16 it is necessary at the moment, but I just want to
17 indicate a couple of problem areas with which we are
18 in contact, particularly those of us in industry who do
19 industrial work. One is the situation where a boy that
20 leaves school and comes to work in an industry, if he
21 has been inactive after school days and in the spring
22 he is kind of out of condition, he has been cramming
23 for exams as we all have sometime in our career, and
24 he starts and he is using muscles which he has not used
25 for some time in the new employment. These muscles,
26 as we all know, in the spring when we go out and play
27 golf for the first time are a little sore and out of
28 condition following exposure to the activity. Sometimes
29 he feels just as some of us used to after our first game
30 of tennis in the spring if he had been using his right



1 arm repetitively at his job.

2 In the present statement of disability
3 disablement arising out of and in the course of
4 employment we don't know just where we stand in relation
5 to this particular type of muscle soreness. It is
6 physiological, it is normal in a human being who uses
7 muscles which he has not used for some time. He finds
8 it stiff and sore for a few days and this is a point
9 which concerns doctors and particularly those of us in
10 industry, I am sure you will agree. If it is a normal
11 physiological or normal reaction, the muscle that is
12 used repeatedly becomes stiff and sore. This is hardly
13 related to an accident or really a condition primarily
14 arising out of employment. They are sore because he is
15 using them and that is part of his job. I won't explore
16 that angle any more ----

17 . THE COMMISSIONER: What is the point
18 you are making, Doctor?

19 DR. BARNARD: Anyone who goes to new
20 work or new activity or new athletics experiences the
21 same type of muscle soreness.

22 THE COMMISSIONER: Then, that man would
23 come to you, would he, complaining of soreness or
24 something and you would report to the Board?

25 DR. BARNARD: Report it to the Board.

26 THE COMMISSIONER: And is it your
27 impression that because he is working the Board feels
28 he is entitled to compensation without regard to what
29 happened?

30 DR. BARNARD: Since the Act was changed



1 in 1963 strictly this is due to employment and the
2 interpretation you can put on this particular condition.
3 It arose out of employment because he uses muscles on his
4 job.

5 THE COMMISSIONER: There would have to be
6 some disablement, wouldn't there?

7 DR. BARNARD: This is debatable, pain
8 threshold is different in one case and another and
9 some people give up easier than others. There is a grey
10 area there. We have had cases who stayed home basically
11 on this type of soreness.

12 THE COMMISSIONER: It is your
13 impression that the words "out of employment" and
14 "arising out of the course of employment" are sufficient
15 to make almost anything possible.

16 DR. BARNARD: Anything that happens
17 during his working day is open to that interpretation.

18 THE COMMISSIONER: If he leans over to
19 pick up a pen or something ---

20 DR. BARNARD: Some of these have been
21 allowed which we as doctors in industry particularly
22 think are really debatable.

23 MR. ESTEY: How would you eliminate it?
24 Would you put in "other than by physiological influences
25 or factors"? or how do you cut it out?

26 DR. BARNARD: That would take someone
27 smarter than I am!

28 MR. ESTEY: You would have to leave
29 "disablement" in the Act. I don't think you are talking
30 of taking "disablement" out of it, but you want to make



1 it much narrower.

2 DR. BARNARD: Not common to all activity.
3 This is one solution, and the other thing is many of the
4 conditions which afflict all of us happen during the
5 eight hours of our working day because this is part of
6 the time we are on our feet and moving and active and
7 this would probably happen in the home or even sitting
8 still in a theatre or something else, and you get
9 muscle stiffnesses. If they arise by someone getting up
10 from behind a desk, an office, you get into this grey
11 area. He is at work and he is standing up or the man
12 who bends down to pick something up doesn't touch it,
13 hasn't started to lift it is in the same position as if
14 he were tying his own shoelaces, but yet he is on the
15 way down to get hold of something and started on up.
16 This is why many of us are concerned with this widening
17 of the interpretation of the word "accident", if you
18 want to think of it that way to include conditions
19 arising out of employment.

20 MR. ESTEY: Is it convenient for me to
21 interrupt you as you go along?

22 DR. BARNARD: Yes. Basically those are
23 the points I wanted to make. In some ways it would be
24 of the greatest assistance to all of us if it could be
25 defined more definitely relating it to exposure to
26 activity at work in some way. It is unusual or beyond
27 the normal or this area.

28 MR. ESTEY: Is it fair to say that you
29 are now losing me like I may have lost someone else on
30 legal matters: Is it true to divide what you said into



1 two parts? You said where a condition arises by reason
2 of activity which is not unique to the job but is
3 universal, then that still might be a disablement and it
4 arose out of employment in the sense the activity
5 happened on the job, but it is really not attributable
6 to employment any more than stiff muscles are and if it
7 goes beyond a three-day period, then it is a disablement
8 compensable under the Act. That is point one, and then
9 am I right in saying that point two is this, that where
10 the condition arises during the course of work and at
11 the premises of the employer and is traumatic in the
12 sense that he went in there healthy and he comes out
13 with some kind of a medical condition it still may not
14 be substantially in the course of employment, helpfully
15 described as being in the course of employment because
16 it might have happened by reason of something that he
17 could have done equally well outside of this employment
18 such as tying his shoelaces.

19 DR. BARNARD: That is right, sir.

20 MR. ESTEY: But if he tied the shoelace
21 during office hours and gets a slipped disc, then it is
22 a disablement arising out of employment, that is your
23 second point?

24 DR. BARNARD: That is right. His
25 movement is the same whether he bends to tie a shoelace
26 or bends to pick something up.

27 MR. ESTEY: For which he is paid.

28 DR. BARNARD: That is right.

29 MR. ESTEY: Well, speaking for yourself,
30 if you could invent the language to be used to exclude



1 that we would be glad to put it in the report. Do you
2 have any suggestions, or do any of your associated
3 associations across Canada have anything which would be
4 helpful on this?

5 DR. BARNARD: It is a new problem since
6 the widening of the Act in 1963, of course. Before then
7 it was just accident which was an incident which people
8 saw. It has just arisen since then and truthfully I
9 don't know what the experience is in the other
10 jurisdictions on this aspect of it.

11 THE COMMISSIONER: In other words, I am
12 thinking about your medical man who has to interpret the
13 evidence. If in the course of his duties in the job he
14 leans down to pick up a penholder, if you want to use
15 that example, or something, and he gets a pain in his
16 back that would be the kind of thing I mean to say where
17 a medical man would say, "Well, this is due to his
18 general position, not due to anything ----" You would
19 require some evidence of heavy lifting or something else
20 in order to make it compensable?

21 DR. BARNARD: Well, of course, this is
22 in the Board's hands. We just fill the reports out as
23 to what actually happened, but there seemed to be a
24 certain amount of vagueness in the interpretation of
25 this by the Board.

26 THE COMMISSIONER: Yes, I would have
27 thought that I would be surprised to learn that the Board
28 was paying compensation under those circumstances where
29 it bore no relation to the things he had done on the job
30 other than stoop over.



1 DR. BARNARD: Possibly one way would be
2 the man who is lifting above average weight and required
3 to work in an unusual position, like cramped or something
4 and that sort of thing would get around some of this
5 sort of difficulty, but it is pretty wide expression at
6 the moment "arising out of the course of employment" and
7 this is troublesome, particularly to those of us in
8 industry.

9 MR. ESTEY: As you speak and as I read
10 your brief it seems that it is soluble. Let us see if
11 it bears the light of examination. A back condition
12 seems to be the subject of discussion in this matter,
13 both here and in other hearings, and I take it that a
14 man can injure his back at work in a way that you can
15 trace to performing a duty for his employer, there is
16 no quarrel with that, he is compensated or he might
17 injure his back while he is on the premises of the
18 employer, but not while he is lifting a weight or
19 carrying a wheel or something else he is expressly paid
20 to do. I take it there is an in-between situation
21 which is even more difficult and that is that the man
22 might have been out playing football the day before on
23 the weekend and did something to his back which sets the
24 stage for the next little event which is just a trigger.
25 It is not really a blow, it is a trigger, and then he
26 picks up a testtube full of water and it is enough weight
27 that out goes the muscle or whatever it is. Now, that
28 is compensable, I suppose, unless you knew that the
29 injury was substantially caused by playing football, is
30 that right?



1 DR. BARNARD: This is possible, yes.

2 MR. ESTEY: These are all shades of the
3 same problem.

4 DR. BARNARD: It is the grey area.

5 MR. ESTEY: And then there is the second
6 problem linked together with that one that the man might
7 have a back ailment arising out of not actually doing
8 any work, but preparing to do the work such as crawling
9 through a hole which he might have done by tying his
10 shoes and which he happened to do on the employer's
11 premises. Is it the view of the O.M.A. that either this
12 matter should be examined or is it the complete view of
13 the O.M.A. that these things should not be compensable
14 unless they are directly attributable to performing
15 work for which the man is paid?

16 DR. BARNARD: I think the latter is
17 our opinion on this, that it should be associated
18 directly with work or work should be in the picture
19 definitely. Otherwise, we have sort of an eight-hour
20 Medicare setup.

21 MR. ESTEY: I suppose it is not a matter
22 of words, but it is a matter of how you read the words.
23 "Disablement arising out of employment". Do you suppose
24 if it said, "disablement arising out of the performance
25 of the duties of the employee" that it might meet the
26 points we are talking about?

27 DR. BARNARD: Possibly.

28 THE COMMISSIONER: It would be interesting
29 to hear how the Board interprets that because I would
30 think that this submission is made in more briefs than



1 yours and I would think that is what the Board is there
2 for, to decide whether this claim bears any relation to
3 the work he is doing or what he has been doing in the
4 course of work and if not, that it would be refused and
5 that they would not assume just because he is working
6 there that he should be paid. It would be interesting to
7 find out what the situation is. Well, thank you very
8 much.

9 MR. ESTEY: Thank you very much, Doctor.

10 Mr. Commissioner, may we now revert to
11 the first topic (a) in the notice Appeal Procedure and
12 the subsections of that and deal with those of the
13 briefs which have been put forward but which were not
14 amplified orally this morning. The first one going
15 back to the beginning of the alphabet that has a
16 submission in that connection which was not presented
17 orally is the Automotive Transport Association, and if I
18 may, I would like to ask Mr. Guthrie if he would read
19 that.

20 THE COMMISSIONER: It is just to be read
21 in on this particular point.

22 MR. GUTHRIE: The portion of the brief
23 of the Automotive Transport Association of Ontario
24 dealing with appeal procedures, Mr. Commissioner, begins
25 at page 15:

26 PROPOSALS TO IMPROVE THE ADMINISTRATIVE AND IN PARTICULAR
27 THE APPEAL PROCEDURES OF THE WORKMEN'S COMPENSATION BOARD

28 1. It is appreciated that a new system of
29 appeals was established by the Board in 1965 which
30 provided for a greatly improved system in respect of



1 appeals. However, it is felt that further improvement is
2 still possible, particularly with respect to the
3 operations of the Review Committee. At the present, this
4 committee reviews decisions made by the claims staff on
5 the basis of the evidence on file, pertinent information
6 obtained upon investigation, and any additional
7 information supplied through correspondence. Where an
8 appeal is lodged by a claimant to the Review Committee
9 it has not been the practice to advise employers whose
10 rights will be affected by the decision and, of course,
11 the "correspondence" normally contains representations
12 made on behalf of the claimant with no opportunity of
13 rebuttal by the employer. Although decisions of the
14 Review Committee can be appealed to the Appeal Tribunal,
15 an employer may find himself charged with the burden
16 of overturning a decision of the Review Committee made
17 on the basis of information and representations which
18 he has had no opportunity to question and rebut. It is,
19 therefore, respectfully submitted that provision be made
20 for submissions by all affected parties at the Review
21 Committee stage, and that all parties be given notice and
22 access to all communications and information considered
23 by the Review Committee in making its decision.

24 2. The annual report of the Workmen's
25 Compensation Board tabled in the Legislature on July 10,
26 1966, contains the following:

27 "The procedure at Appeal Tribunal
28 hearings is informal. The person
29 making the appeal may choose to
30 be represented by union leaders,



1 Members of the Legislature, a
2 solicitor or other responsible
3 persons, or to conduct his own
4 appeal with the assistance of the
5 Tribunal. He may testify on his
6 own behalf, and call witnesses
7 to assist in presenting his
8 appeal. Cross-examination of
9 witnesses is not permitted, but
10 anyone who may be affected by
11 the Tribunal's decision is
12 entitled to bring forward any
13 evidence bearing on the issue.
14 All evidence is taken down in
15 writing, to be available for future
16 use."

17 It is respectfully submitted that these
18 provisions can be improved by providing that all parties
19 which may be affected by a decision of the Appeal
20 Tribunal may be represented by counsel or otherwise,
21 that all parties should have the right to cross-examine
22 opposing witnesses and that the files and information
23 upon which the Tribunal's decision will be based be as
24 far as possible, open to all parties.

25 3. Section 86, Sub-Sections 4, 6A, and 7
26 provide as follows:

27 "(4) Where in the opinion of the
28 Board sufficient precautions have not
29 been taken for the prevention of
30 accidents to workmen in the employment



1 of an employer or where the working
2 conditions are not safe for workmen
3 or where the employer has not
4 complied with the regulation
5 respecting first aid, the Board may
6 add to the amount of any contribution
7 to the accident fund for which the
8 employer is liable, such a percentage
9 thereof as the Board may deem just
10 and may assess and levy the same
11 upon the employer.

12 "(6A) Where the work injury
13 frequency and the accident cost
14 of the employer are consistently
15 higher than that of the average
16 in the industry in which he is
17 engaged, the Board, as provided
18 by the regulations, may increase the
19 assessment for that employer by such
20 a percentage thereof as the Board
21 may deem just, and may assess and
22 levy the same upon the employer.

23 "(7) The Board, if satisfied
24 that the default was excusable, may
25 in any case relieve the employer
26 in all or in part from liability
27 under Sub-Section 4."

28 Firstly, it is submitted that the
29 provisions of Sub-Section 7 ought to apply to liability
30 imposed under Sub-Section 6A as well as Sub-Section 4.



1 However, more importantly, Sub-Section^S
2 4 and 6A place the Board in the invidious position of
3 creating and imposing liability to make extraordinary
4 payments to the fund which the Board itself administers.
5 No provision for an appeal to an independent body has
6 been provided. It is respectfully submitted that where
7 an employer's assessment is increased under Section 86,
8 provision should be made for appeal to an independent
9 body. And then I believe, sir, the balance of the brief
10 deals with matters that will be arising under other
11 topic matters.

12 Then, the next brief that was not
13 presented today on this subject was that of the Ontario
14 Legislative Committee of the International Railway
15 Brotherhoods, and beginning at page 6 of that brief.

16 We are mindful of the prompt relief
17 that can be had and should be afforded disabled workers
18 and dependents by the Board under its authority, but
19 there is a growing lack of confidence in the Board and
20 administration due to the recent changes that have been
21 made.

22 This matter was brought to the floor of
23 the Legislature of Ontario during the Evening Session of
24 Monday, June 20, 1966.

25 During the debate mention was made of
26 the report of the Honourable Justice Tysoe to support the
27 new appeal system instituted during the past year. It
28 has been our experience that this new system is
29 delaying the adjudication of claims, thus depriving the
30 workman of his right to benefits under the Act, causing



1 an unnecessary hardship for the man and his family.

2 Mr. Justice Tysoe, in his report stated,
3 and we quote:

4 "I cannot see the necessity in
5 British Columbia of both a Board
6 of Review and an Appeal Tribunal
7 as in Ontario. My impression is
8 that the former can perform the
9 functions of both, and it is
10 my intention that it should do
11 so."

12 As Mr. Justice Tysoe did not recommend
13 this appeal system and did support our former procedure
14 of appeal; and as representatives of our members, we
15 receive so many complaints of delays and etcetera, since
16 this new system was instituted, we feel that a thorough
17 study should be made of the Administration, the handling
18 of claims, and the new appeal system, to determine the
19 cost and efficiency of same.

20 It is unfortunate that they have not
21 gone on to be a little more constructive.

22 THE COMMISSIONER: We will no doubt
23 when you are pursuing this further with some representa-
24 tive of the Board inform the Commission of the number
25 of claims handled in British Columbia compared with
26 those handled in Ontario.

27 MR. GUTHRIE: Yes, we will have that
28 information, sir.

29 And then another brief that was not
30 dealt with this morning is that of the Labourers'



1 International Union of America, Local 183, which deals
2 at page 19 with the question of appeals, and the first
3 subheading is:

4 Advisory Letters in Two Languages

5 Section 72 of the Act prohibits a
6 review of any Board action or decision by any Court.
7 However, under the authority of Section 72 (3) of the
8 Act, the Board is empowered to reconsider, rescind,
9 alter or amend its own decisions, and to this extent,
10 it has set up an internal appeal procedure whereby an
11 injured workman may appeal to an Appeal Tribunal for
12 reconsideration of his claim.

13 The usual practice of the Board,
14 following the rejection of a claim by the Review
15 Committee, is to send a letter to the injured workman
16 advising him of the rejection and informing him of his
17 right to appeal to the Appeal Tribunal. However, many
18 of the men receiving these letters speak and read a
19 language other than English, so are unable to fully
20 comprehend the valuable right to appeal being afforded
21 to them. Therefore, in cases of injured workmen known
22 to the Board to be unable to read English, we would
23 urge that two copies of such letters be sent, one in
24 English and one translated into the native language of
25 the particular workman receiving it.

26 (b) Right to Counsel

27 It is further recommended that these
28 letters advise each workman of his common law right to
29 retain counsel for presentation of his case before the
30



1 Appeal Tribunal.

2 THE COMMISSIONER: I believe the letters
3 do state that.

4 MR. GUTHRIE: We will have those letters
5 produced for us tomorrow.

6 THE COMMISSIONER: There has been some
7 recent change in procedure having to do with the workings
8 of the Board.

9 MR. GUTHRIE: The Board officers advise
10 that there has not been any change more recent than the
11 general change in March of 1965, but those letters will
12 be available tomorrow.

13 Under (c) Evidence:

14 The usual practice of the Board when
15 informing an injured workman that his claim has been
16 rejected is to state the following:

17 "It is the opinion of the Review
18 Committee that the evidence on file
19 fails to establish personal injury
20 by accident arising out of and in
21 the course of the employment,
22 and accordingly rejects your claim".

23 After the Review Committee has rejected
24 his claim, a workman who wishes to appeal is able to
25 obtain upon request a summary of information upon which
26 the Review Committee has based its decision. However,
27 in virtually all cases, this summary is insufficient
28 for the proper preparation and presentation of an appeal,
29 and the claimant is forced to proceed before the Appeal
30 Tribunal in a position of distinct disadvantage, or to



1 abandon his appeal completely. We submit that this
2 practice of shielding evidence is contrary to the rules
3 of natural justice, and should be abolished immediately.

4 (d) Subpoenas

5 On a number of occasions when it has
6 been necessary to subpoena witnesses on the appeal of
7 an injured workman, the Appeal Tribunal has refused to
8 issue the necessary subpoenas at the request of counsel
9 for the appellant. Again, this has imposed an undue
10 hardship in the presentation of the appellant's case.
11 We recommend that this practice be terminated.

12 That is all in that brief on appeals.

13 The next, Mr. Commissioner, is that of
14 the Motor Vehicle Manufacturers' Association. The Motor
15 Vehicle Manufacturers' Association at page 6 at the
16 bottom there is a matter that might be relevant, and then
17 over the page. Under the heading "Small Claims".

18 Recently we have observed indications
19 that the administrative department of the Board has
20 appeared to settle small claims without full inquiry.
21 We question the wisdom of settlement which may be based
22 on administrative efficiency rather than on merit. Such
23 practice could eventually lead to frivolous or fraudulent
24 claims. More particularly it could be dangerous because
25 it can establish grounds for re-opening a claim for
26 further benefits in later years. And, of course, I
27 suppose it would follow, Mr. Commissioner, that it would
28 mean there could be no appeal in practical terms from a
29 settled claim.

30 And then on page 7 under "False



1 Statements":

2 We are aware that the Appeal Tribunal,
3 conducting hearings, receive statements under oath regarding
4 accidents. We are concerned that there is no provision
5 for penalties when false statements are made under
6 oath about an alleged injury. Denial of claim is, of
7 course, no penalty under these circumstances. We suggest
8 that suitable penalties be provided if false statements
9 are given.

10 I might interject that there are, of
11 course, provisions in the Criminal Code that might well
12 be applicable in that situation, but not in the Act
13 itself.

14 MR. KERR: We would appreciate very
15 much knowing what the definition of "Small Claims" is
16 in this brief to assist us in preparing information on
17 this particular subject, if we may, Mr. Commissioner.
18 We do not know what they mean by the term "Small Claims".

19 THE COMMISSIONER: If you do it at all,
20 under what circumstances do you do it, if the Board does
21 it? Is it a practice of the Board to hear a certain
22 number of them without making inquiry or investigation?

23 MR. KERR: No, sir, we will be
24 presenting information on that, but so we will have the
25 specific information we wondered what they meant in the
26 brief by "Small Claims". That term is not familiar to
27 us.

28 THE COMMISSIONER: I suppose they don't
29 know exactly what **ones** you **do do**. You are acquainted
30 with what you do, **and** probably it is not necessary for



1 them to define it. I would like to know what ones you do
2 do it with.

3 MR. KERR: Thank you.

4 MR. GUTHRIE: Mr. Dykes representing
5 that association was here this morning and I think if I
6 do recall he said that he would be back with other parts
7 of their brief and you might ask about that at that time.

8 MR. KERR: Thank you.

9 The next one is the brief of the Ontario
10 Federation of Construction Associations which deals with
11 the appeal structure at the foot of page 4:

12 We would refer you to the appeal
13 structure of the Workmen's Compensation Board (See
14 Appendix "B") which shows the various levels through
15 which an appeal must go, beginning with Administration
16 to a Review Committee to an Appeal Tribunal and finally
17 to the Board. The industry feels that the appeal
18 structure is in its present state entirely too cumbersome.
19 It should be noted, too, that members of the appeal
20 committees are presently drawn from the administrative
21 staff of the Board itself.

22 The problem arises in the present appeal
23 procedure as to whether there may be a tendency for a
24 Review Board or Appeal Tribunal to support previous
25 decisions rendered since all appointees are chosen from
26 the original administrative branch of the Workmen's
27 Compensation Board.

28 It is felt that the Review Committee
29 should consist of outsiders appointed in the same manner
30 as arbitration boards. It is obvious that from such



1 appointments there are many advantages. It is our
2 understanding that the B. C. legislation which was
3 amended in 1965 seems to be more effective because the
4 Review Committee does consist of persons from without
5 the Board.

6 We respectfully point out that in the
7 International Labour Conventions and Recommendations,
8 Recommendation #23 relating to jurisdictional disputes
9 concerning workmen's compensation states that such
10 disputes turn not only on the interpretation of the laws
11 and regulations but also on questions of an occupational
12 character requiring a thorough knowledge of working
13 conditions. It recommends that every dispute relating
14 to workmen's compensation should be dealt with by a
15 special court or board of arbitration comprising, with or
16 without the addition of regular judges, an equal number
17 of employers' and workers' representatives nominated
18 or appointed to act as adjudicators by their respective
19 organizations, or elected by bodies of employers and
20 workmen. Where such disputes are dealt with by ordinary
21 courts of law, the court should be required to hear
22 employers' and workers' representatives as experts in
23 cases involving questions of an occupational character
24 and, in particular, the question of degree of incapacity.

25 It is our opinion that the question
26 of keeping workmen's compensation out of litigation and
27 the courts is an excellent precept, but in terms of justice
28 and equity an appeal should be made to a tribunal or
29 body other than the tribunal making the original decision,
30 and we do not feel that such steps would necessarily



1 destroy any administrative acts of workmen's compensation
2 but rather enhance the operations of this quasi-
3 judiciary body.

16 4 THE SECRETARY: I should have said the
5 man phoned me at noon hour about that. He intends to
6 come up in the morning, but he is at a meeting now.
7 I think we will hear from him tomorrow morning.

8 The brief of the Ontario Municipal
9 Association at page 4.

10 THE COMMISSIONER: Counsel adopted the
11 resolution.

12 MR. GUTHRIE: This resolution reads:

13 Whereas the present procedure of
14 conducting appeal tribunals under the Workmen's
15 Compensation Act is unsatisfactory in that the workman
16 is seldom given the benefit of a reasonable doubt in the
17 findings by said tribunals; and

18 Whereas as it was stated in the
19 Legislature by the Honourable Minister of Labour, Mr. L.
20 Rowntree, that in effect the appeal tribunals procedure
21 of the Workmen's Compensation Board was loaded against
22 the claimant;

23 Now therefore be it resolved that the
24 Act be amended so that if any doubt is brought out
25 during the trial before the appeals tribunal, particularly
26 in evidence presented at said tribunal, that the claimant
27 be given full benefit of such doubt;

28 And be it further resolved that the
29 full file of evidence and not merely a summary thereof
30 be sent the claimant or his counsel in ample time to



1 prepare a suitable defence prior to date of hearing.

2 That is the only item on that brief
3 dealing with appeals.

4 The brief of the Ontario Provincial
5 Conference of the Bricklayers', Masons' and Plasterers'
6 International Union, at the top of the second page:

7 We are satisfied, Mr. Commissioner,
8 that our past experience could only command us to
9 respect and to admire the past procedures, to what we
10 would have to now say, the Old Workmen's Compensation
11 Board.

12 One would be correct in asking the
13 question, "What do you mean when you say the Old
14 Workmen's Compensation Board?", The answer is quite
15 simple. The workings and procedures of the new
16 administration is doing nothing less than causing chaos,
17 undue long periods for appeal hearings, not allowing
18 persons to appear before a Review Committee in the delay
19 or doubt of a claim.

20 One must appreciate the fact that it is
21 most difficult to explain in letter form and try to
22 portray the same understanding which can be portrayed
23 in a personal interview.

24 This reasoning is supported most
25 factually in the case of Mr. A. Merlino, Claim No.
26 5986894, who under the instruction of his Physician, had
27 to cease working because of his injury in April, 1965.
28 Because of this action and because many months elapsed
29 without receiving any compensable benefits from the
30 Board, Mr. Merlino through his local union representative



1 requested myself as President of the Ontario Provincial
2 Conference to intercede on his behalf.

3 In contacting the Board Officers, I
4 learned that the case was before the Review Committee, and
5 that it was not permissible for me to appear before the Committee
6 but I was informed that it was permissible to write to
7 the Committee and they would review my correspondence.

8 The Review Committee rejected the claim
9 and the matter was referred to the Appeals Tribunal of
10 the Board and the hearing was held on the 28th day of
11 January, 1966, which was ten (10) months after the
12 injured workman's layoff of April 2, 1965. This long
13 delay was totally unnecessary because the Appeals
14 Tribunal upheld the appeal of the injured workman.

15 Apart from the unnecessary long delay,
16 one of the most disturbing factors was, when we were
17 notified that the case had been referred to the Appeals
18 Tribunal and that the Board refused to furnish the
19 workman with all of the facts upon which they based their
20 decision. The Board did, however, provide us with a
21 summary of information, but this of course, fell far
22 short of all the facts involved.

23 It is therefore our submission, that the
24 Board's new and present procedure is an introduction that
25 is totally unnecessary and is depriving the Board of
26 retaining the respect and admiration that it once
27 enjoyed from the Labour Movement and the workers in
28 general, throughout the Province of Ontario.

29 We do, therefore, Mr. Commissioner,
30 recommend to you the following:

1. After careful study of the Board's past



1 and present practices and procedures, that you recommend
2 that the practices and procedures revert back to that
3 of a couple of years ago.

4 2. If it is necessary that a doubtful
5 claim be submitted to a review committee, that personal
6 representation be allowed to appear before the review
7 committee, which could prevent unnecessary and long
8 delays in establishing a claim.

9 3. If it is necessary that a doubtful claim
10 be submitted before an Appeals Tribunal, that the
11 injured workman or his appointed representative be
12 furnished with a complete and detailed record of
13 evidence upon which the Review Committee's decision
14 rejected the claim.

15 4. That if it is necessary to deviate from
16 the Board's past policy and procedure, that long-service
17 Officials of the Board who have knowledge and experience
18 of the workings of the Board's practice and procedure be
19 allowed either individually or collectively to submit
20 their views to any changes prior to the new procedures
21 being introduced and before it becomes policy of the
22 Board.

23 All of which is respectfully submitted
24 for your careful study and consideration.

25 Don Williams

26 President

27 Ontario Provincial Conference.

28 And the last brief not dealt with on
29 this subject area today is that of the Provincial
30 Building and Construction Trades Council of Ontario.



Beginning at page 8 of the brief under Point 7: "CLAIMS HANDLING PROCEDURE PRIOR TO MARCH OF 1965".

#1 - (a) Having in mind the statements made in the Legislature, as reported in the Legislative Hansard of June 20th, we would respectfully request the Commissioner to make an exhaustive study of the claims handling procedures. From our experience in dealing with the Board over the past many years we cannot see where any change was made in the adjudicating of claims.

It is our opinion that a number of additions were made to the staff and titles changed which have lowered the efficiency of that department rather than take care of any increased volume. We believe that the opposite has been the case. Never have we had so many complaints from our membership concerning long delays, both in the adjudication of claims and in getting our payments.

#1 - (b) Prior to March, 1965 the claims handling procedure was as follows.....If a Claims Officer in the initial adjudication was not able to determine entitlement to benefits and therefore it would be necessary to reject the claim, the file had to go to a committee of three. These three were senior claim specialists who sat above the claims adjudicating group. The claims, to be rejected by a claims officer, were transferred to these three at almost hourly intervals. This provided for an automatic speedy review by a much more experienced senior claims officer. His review was to make certain that all pertinent information was on file, that no points had been overlooked by the adjudicator. If he was in



1 agreement with the rejection of the claim, then the claims
2 officer handling the file initially sent such a notice to
3 the workman. If, however, this panel felt a local
4 investigation should be held; a further medical examina-
5 tion arranged, or that the points at issue could be
6 determined only by a hearing with all parties being
7 under oath, then such arrangements were made immediately.

8 If the workman felt his case should be
9 appealed, a written notice was all that was required.
10 This would take his case immediately to the Review Board
11 who would review the evidence, order such enquiries it
12 felt were necessary and make a decision on the basis of
13 facts then available; or it could immediately schedule
14 a hearing to determine the credibility of the persons
15 involved. Any subsequent appeal was to the Board itself.
16 He talks there about first if rejected by the claims
17 officer it would go to a committee of three.

18 MR. GUTHRIE: A senior claims officer,
19 yes.

20 THE COMMISSIONER: Then he talks about
21 a review board after that.

22 MR. GUTHRIE: And then finally the
23 Board which almost makes it look like a four-stage
24 procedure. I don't think that there was a review board
25 over and above those three.

26 MR. KERR: We would be delighted to
27 clarify that in our presentation, sir. I believe some
28 confusion exists in view of what we heard today on that
29 particular point.

30 MR. GUTHRIE: The brief goes on:



1 It has been our experience that we could
2 get cases appealed through the Review Board in a matter
3 of two to three weeks. The review group of three above
4 the claims adjudicators provided an automatic almost
5 instant review. Since March of 1965 a claims officer
6 must make his decision on the basis of the information
7 then available to him. A notice then goes to the man
8 and he is told he can appeal. He must then write to the
9 Review Committee and ask for a review. This usually
10 takes about three to four weeks from the date of the
11 accident. The Review Committee's decision is communicated
12 to the man by letter and in this he is told he may
13 have a summary of the evidence if he so desires. This
14 requires that the workman write another letter to the
15 Review Committee making this request. Our experience has
16 been that it is usually about ten days before the workman
17 is in receipt of this.

18 These summaries, we believe, are
19 loaded against the workman, are usually composed of
20 highly technical medical terms, the workman is at a loss
21 to know what to do in filing his written appeal, and
22 usually brings the matter to his union representative,
23 a member of Parliament, or some other such individual.
24 About the only advice we can give him is to take the
25 summary back to his doctor and have the matter explained.

26 He must then write requesting an Appeal
27 Tribunal hearing and if he is lucky a date may be set
28 a month or six weeks after he has forwarded his request.
29 He must then go through the same procedures in asking
30 for a summary of the evidence and a copy of the



1 transcript and then seek advice as to whether he should
2 appeal to the Board.

3 This is a long formal process and does
4 nothing to improve the Board's image and because of the
5 lengthy delays puts the man and his family in a most
6 embarrassing financial position and actually results in
7 privation and hardship.

8 These many complaints together with the
9 great increase in the number of appeals make it apparent
10 to us that the Board's administrative costs must have
11 increased tremendously with a decline rather than an
12 improvement in the efficient handling of claims.

13 Until the institution of the so-called
14 new claims system, a workman always knew where his claim
15 failed to meet the requirements of the Act -- on either
16 medical or non-medical grounds. If the former was the
17 case, we could advise the workman to either return to
18 his doctor for a further appraisal of his condition or
19 we could ask the Board directly to arrange to have one
20 of its Medical Department examine the man or request a
21 referral to an independent specialist of the Board's
22 choosing.

23 If non-medical points were involved, we
24 could always advise the man to discuss particulars of his
25 accident with fellow-workmen, with his supervisor, and
26 also with the employer to see if an accident could be
27 established. If we were unable by this procedure to
28 establish an accident then we always advised our member-
29 ship that there was no use appealing the matter further
30 to the Board.



1 We would ask the Commissioner to go over
2 some of the summaries of evidence supplied to the workman
3 as read to the Legislature on June 20th, 1966. And I
4 believe there will be samples of those available tomorrow,
5 sir.

6 I am sure, Mr. Commissioner, you will
7 agree that the average workman would not have the
8 slightest idea as to what the medical problem was and is
9 in no position to write out his reasons for appeal. These
10 present procedures only tend to confuse the workman and
11 involve long drawn-out and costly appeal procedures,
12 leaving the workman most bitter because of the
13 formalities involved, and with the belief, in view of the
14 language used by the Board, that he is having something
15 put over him.

16 Again referring to the Legislative
17 Hansard of June 20th, 1966, the Honourable Minister of
18 Labour Mr. Rowntree quotes at length a statement by Mr.
19 Justice Tysoe extolling the new procedures. The Royal
20 Commissioner should be asked to investigate the extent of
21 Mr. Justice Tysoe's enquiry, if any.

22 The facts in this statement are as
23 follows...Chief Justice Alex C. DesBrisay was appointed
24 by the B.C. Government to conduct a Royal Commission
25 Enquiry into the Act and the administration of the Act
26 in that Province. The British Columbia Federation of
27 Labour suggested to the Chief Justice that he should
28 make a detailed analysis of the operations of the Act in
29 Ontario, since the Ontario Act had complete endorsement
30 of all phases of the organized labour movement. It is



1 our understanding that the Chief Justice called on the
2 Ontario Board late in the fall of 1964. Unfortunately
3 he died suddenly following his return to British
4 Columbia and without completing his notes on the Ontario
5 administrative system.

6 Mr. Justice Charles W. Tysoe was
7 appointed to complete the Royal Commission Enquiry begun
8 by Chief Justice DesBrisay and because there were no
9 notes available to Justice Tysoe concerning the Ontario
10 operations the Justice visited the Ontario system late
11 in May, 1965. The new appeal system had been in effect
12 less than six weeks at that time, so there was no
13 possibility of Mr. Justice Tysoe weighing the results of
14 the new system against the procedures formerly in effect.

15 Mr. Justice Tysoe did not contact
16 representatives of organized labour, organized management,
17 nor as far as we can learn, organized employers; so there
18 is nothing to justify the Board's propaganda that the
19 eminent jurist is in full support of the new procedures.

20 That completes the briefs not submitted
21 by the associations themselves.

22 THE COMMISSIONER: That completes the
23 matter in connection with the first part of the hearing
24 for this week, is that right, other than what we are to
25 hear tomorrow morning?

26 MR. ESTEY: Yes, other than what we have
27 reserved today and others which may appear before the
28 Commission.

29 It may be that somebody here has got
30 some further arrangements they would like to make for the



1 presentation of the balance of their briefs. If so,
2 would you be good enough to see me or give me a call on
3 the telephone?

4 THE COMMISSIONER: Well, we will adjourn
5 until ten o'clock tomorrow morning. We will also seek
6 to make inquiry as to whether there are any better-
7 ventilated quarters available in which we can sit. In
8 the meantime we will continue hearings here. It might
9 not be as crowded on future occasions as they have been
10 today.

11
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13 ---At 4:30 p.m. the hearing adjourned.
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PROVINCE OF ONTARIO
ROYAL COMMISSION
ON
THE WORKMEN'S COMPENSATION ACT

HEARINGS HELD AT
TORONTO ONTARIO

VOL. NO.

3

DATE

27 September 1966

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IN THE MATTER OF The Public Inquiries
Act, R.S.O. 1960, Ch. 32

- and -

IN THE MATTER OF an inquiry into and
Report Upon The Workmen's Compensation
Act.

Public Hearings

BEFORE: The Honourable Mr. Justice W. A.
McGillivray, Commissioner, at Room
200, 67 Richmond Street West,
Toronto, Ontario, on Tuesday,
27th of September, 1966.

APPEARANCES:

W.Z. Estey, Q.C.)	
and)	Counsel to the Commission
H.D. Guthrie)	
G.A. Johnston	Secretary

ALSO PRESENT:

J. Ostrowski	For himself
R. Koskie and)	For the Labourers' Inter-
G. Gallagher)	national Union of North
	America, Local 183
H. Kobryn and)	For Provincial Building and
J. Carroll)	Construction Trades Council
	Of Ontario
D. Williams)	For Ontario Provincial
and)	Conference of the Bricklayers'
D. DeMonte)	Masons' and Plasterers'
	International Union
W.H. Oliver)	
and)	
D.S. Black)	For The Canadian Manufacturers'
	Association
G.R. Poole, Executive Director	
M.R. Kerr, Director of Claims and Rehabilitation Services	
G. Black, Co-ordinator of Claims Services	
E. Kergon, Claims Officer - For The Workmen's	
	Compensation Board.



1	<u>Submission of</u>	
2		
3	J. Ostrowski	219
4	Labourers' International Union of North America, Local 183	242
5	Provincial Building and Construction Trades Council of Ontario	283
6	Ontario Provincial Conference of the Bricklayers', Masons' and Plasterers' International Union	306
7		
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9	The Canadian Manufacturers' Association	383
10		

EXHIBITS

11	<u>No.</u>	
12		
13	1	Copy of letter from Workmen's Compensation Board to Robins & Robins dated August 26, 1966.
14		256
15	2	Letter from Workmen's Compensation Board dated March 29, 1966, addressed to Mr. Domenico Nesci in connection with Claim No. 6670944.
16		264
17		
18	3	Copy of letter from Workmen's Compensation Board dated September 29, 1966 addressed to the Labourers' Union, Local 183 in connection with Claim No. 6396812 re Domenico Orsi.
19		265
20		
21	4	Copy of letter dated December 28, 1965.
22		266
23	5	Letter from Messrs Robins & Robins addressed to The Workmen's Compensation Board re Claim No. 6396812 and copy of Board's reply dated December 31, 1965.
24		266
25		
26	6	Bundle of form letters sent by Workmen's Compensation Board.
27		353
28		
29		
30		



1 ---Upon commencing at 10:00 A.M.

2
3 MR. ESTEY: We have, Mr. Commissioner, to
4 finish off the Appeals Discussion this morning, a brief
5 by Mr. Ostrowski, and we will start with him and then we
6 have the Labourer's International. Mr. Ostrowski is here
7 on Appeals Procedure.

8 MR. OSTROWSKI: My Lord, as was yesterday's
9 procedure, should I read my brief?

10 THE COMMISSIONER: You can proceed as you
11 like, Mr. Ostrowski. I suggest that you do read it and
12 then Counsel can ask you questions.

13 MR. OSTROWSKI: And can I add some further
14 comments during the reading?

15 THE COMMISSIONER: You can read it and
16 enlarge upon it as you like, but perhaps you might read
17 it first and then have your comment about it.

18 MR. OSTROWSKI: Thank you, My Lord. I will
19 not go through the first part which is rather touching
20 on generalities of the Royal Commission. This brief is
21 limited to the following points of the agenda of the
22 hearing of the 26th of September, 1966.

- 23 1) Appeals on question of Law to the Court.
24 2) Administrative appeals within the Board
25 structure.
26 3) Access to Board Records by directly
27 interested parties.

28 A p p e a l

29 Section 72 (1) gives exclusive jurisdiction to the Board
30 to examine into, hear and determine all matters and



1 questions arising under Part One of the Act - and to
2 any matter or thing in respect of which any power, author-
3 ity or discretion is conferred upon the Board. Further-
4 more - any action or decision of the Board is final and
5 conclusive and is not open to question or review in any
6 court, and no proceedings by or before the Board shall
7 be restrained by injunction, prohibition or any other
8 process or proceeding in any court or be removable by
9 certiorari or otherwise into any court.

10 The above provision of the Act takes the
11 W.C.B. out of any legal system of this Country. It
12 creates a state within a state without responsibility to
13 any Court of Canada.

14 It is a citizen's right in the democracy to
15 have protection of independent Courts against any
16 injustice. Denying this protection violates this basic
17 right - and is unconstitutional.

18 THE COMMISSIONER: You have been dealing now
19 with the right of appeal to the courts. You go on now
20 to the administrative procedure within the Board itself,
21 is that correct?

22 MR. OSTROWSKI: No, that would be the next
23 point, I think.

24 THE COMMISSIONER: All right.

25 MR. OSTROWSKI: Subsection (3) & (4) give the
26 Board authority to reconsider any matter that has been
27 dealt with by it or to rescind, alter or amend any
28 decision or order previously made. In all these actions
29 the Board is not bound to follow legal precedent.
30 All this can be done not only "in absentia" of the party



1 directly involved - and without notifying this party -
2 acting only upon the report of any of its officers and any
3 inquiry - or even by some other person appointed to make
4 the inquiry.

5 THE COMMISSIONER: In this case when you
6 refer to the power of the Board to do this without
7 reference to anybody, you are referring to their power
8 to reconsider?

9 MR. OSTROWSKI: Yes.

10 THE COMMISSIONER: You are not referring to
11 their power on appeal?

12 MR. OSTROWSKI: No, to reconsider. Further-
13 more, any such appointed person has all powers of the
14 Supreme Court of Ontario - (Sections 75(2) and 65.)
15 Section 76 - provides that an order of the Board (for
16 any payment of money made under the authority of Part 1 of
17 the Act) filed with the clerk of any county or district
18 court, becomes an order of that court, and when so
19 filed may be enforced as a judgment of that court. All
20 this may be carried on by the Board by post without the
21 necessity of personal attendance at any office. Any other
22 order or judgment of the court can be appealed in due
23 course. This rubber-stamped filing is final and con-
24 clusive, not open to any appeal, restraint, injunction -
25 or any other court action. And all this is obtained
26 without any participation or even notification of the
27 interested party. The modern version of obtaining by
28 mail - order a judgment of the court - without any
29 control or critical examination by the court provided in
30 the Act.



1 THE COMMISSIONER: You are still talking
2 about the power of the court to reconsider, to reopen
3 a case?

4 MR. OSTROWSKI: That is right.

5 THE COMMISSIONER: I see, all right.

6 MR. OSTROWSKI: Referring to the appeal.
7 Do you wish me to go on further?

8 THE COMMISSIONER: If you wish to stop and
9 deal with the first point, you may, Mr. Ostrowski.
10 MR. OSTROWSKI: The
11 appeal until now exists only with the administrative
12 structure of the Board. It is a matter of common sense
13 to assume that no reasonably sound appeal could be made
14 without knowing the facts, evidence, medical opinion and
15 other reasons of the decision. All proceedings by the
16 W.C.B. are kept secret, and, as one brief presented to
17 the Royal Commission admits, the workman, until he decides
18 to appeal to the Appeal Tribunal "has no idea why his
19 claim failed". And even then, all he can get is a
20 "summary of evidence" prepared by the W.C.B. - in other
21 words, the party who naturally opposes the appeal.

22 THE COMMISSIONER: Why would the Workmen's
23 Compensation Board actually oppose an appeal? They, in
24 theory represent both management and labour. They are
25 an independent party.

26 MR. OSTROWSKI: Independent party but usually
27 who is appealing, Your Lordship? Usually the appealing
28 party is somebody who has been denied his claim.

29 I was trying to find out in this Commission,
30 asking the Secretary, Mr. Johnston, and asking yesterday
31 the representative of the Board where are the regulations



1 of the Board of Appeal. There are none, none at all.
2 If I ask, how can I appeal to the Appeal Tribunal, all I
3 can get is information by one officer of the Board
4 here, in Sudbury, North Bay or anywhere else. So there
5 is no evidence, no trace of any legislation, any regula-
6 tion issued by the Compensation Board itself about how to
7 proceed in the Court of Appeal, who belongs to that
8 Board, who is presiding and so on.

9 I heard during the last day of the hearing
10 a lot of things about the hardship to the workman who
11 must appeal. I am a little bit puzzled with that inter-
12 pretation. Who is appealing usually, Your Lordship?
13 Appealing is the party who was denied his claim. If he
14 will not appeal he will never get his claim. If he
15 appeals, he suffers a hardship. Somewhere, something is
16 wrong. What hardship is done to a person who has the
17 right to appeal? I do not think there is any hardship
18 at all.

19 I think also there is a great misunderstand-
20 ing regarding those different levels of the appeal within
21 the Board structure. The real meaning of the word of
22 appeal is appeal to some higher and, first of all,
23 independent tribunal. With what kind of independence
24 and levels are we dealing within the Board's structure?
25 At the levels of the Compensation Board. I don't think
26 we have any independence. Every officer of the Board is
27 an employee of the Board, is bound to follow the rules,
28 regulations and instructions by the Board. If he does
29 not follow them he will lose his job. All we are talking
30 about is, as one brief mentioned with some kind of



1 satisfaction, is constant movement of the files from one
2 subordinate, from one desk to another subordinate or
3 another group of the same Board while, in reality,
4 all the time you are dealing with the Board - not with an
5 independent and higher level.

6 To me, it makes an impression like following
7 a revolving door. If you go around you land in the same
8 place where you started. You start with the Board and
9 you land with the Board, and you are on the same spot.
10 I can agree that there is a certain degree of bureaucratic
11 control over all these levels of Board employees and
12 officers, but I cannot classify it as an appeal system in
13 the meaning of judicial procedure. I have to apologize
14 for my English, Your Lordship.

15 THE COMMISSIONER: You are doing very well,
16 Mr. Ostrowski.

17 MR. OSTROWSKI: This is my first appearance
18 in connection with legal matters.

19 THE COMMISSIONER: The right of appeal, Mr.
20 Ostrowski, would apply equally to the claimant, the
21 labourer, or to management, and it is a long time ago,
22 it is a half a century ago that the Workmen's Compensation
23 Board came into effect, but at that time the role to re-
24 cover for an injury suffered in his work was pretty hard.
25 If he was negligent he got nothing, if he didn't get
26 medical help from the day he was hurt, he didn't get
27 paid within the three days back to the time he was hurt -
28 all of these things - he had to sue and let management
29 probably appeal but by the time he got through, you have
30 heard the cases that have been stated here in the last



1 day, in some of the American courts, the amount he
2 received was not very much.

3 It was to get away from that, as I understand
4 it and as was indicated in the reasons given in the first
5 Royal Commission by Mr. Justice Meredith, it was sought
6 to get away from this appeal to the courts and that has
7 accounted for this system which, as you say, is not
8 consistent perhaps with all other English procedures.

9 MR. OSTROWSKI: I would not be wrong to
10 say that we are far away from that time. Times change,
11 and I think the ways of doing things also has to change.

12 THE COMMISSIONER: We are far away from that
13 time, Mr. Ostrowski, but to accede to this will open up
14 the litigation all over again, will it not? I mean, it
15 is management that is asking for this change, not labour.
16 Yours is the first voice of labour that I have heard.
17 It is management that has asked for this change. They
18 don't like a lot of these decisions on questions of law
19 and they want to appeal them, questions of law. Yours
20 is the first of all the submissions in which they ask
21 for an appeal on questions of fact.

22 MR. OSTROWSKI: Your Lordship, during
23 yesterday's hearings different parties were represented -
24 union and employers, associations and Boards of Trade,
25 etcetera, and what was to me most amazing was that I
26 did not hear at any time even one mention, one reference
27 to the human aspect of these appeals and rights. Union
28 associations just dealt with numbers, with increasing
29 volume of the appeals, and with costs, then they
30 discussed legal and medical difficulties but nobody



1 mentioned that it was the human right of the human
2 being to decide about his action, about his health,
3 about what is going to be done to his body and how it
4 should be done. We are forgetting that every claim
5 number represents feeling and suffering of a living
6 person. A person who happened to be covered by the
7 Workmen's Compensation Board has no right to use the
8 medical files because only one reason - the files are
9 collected as the Act says or maybe an explanation by
10 the legal department. One reason for the files being
11 collected and prepared is for the purpose of consider-
12 ing the question of indictment, medical aid and compensa-
13 tion. If the workman is satisfied there is no question
14 that if something goes wrong and he is hurt by some action
15 everything is concealed from him and sometimes it is too
16 late to get that evidence which is in the file. I don't
17 mean even doctors' reports - things very simple like
18 X-Rays, to have his examination. He has to start from
19 nowhere again because he was covered by the Workmen's
20 Compensation Board. I don't criticize a hundred percent
21 or even ninety percent the care given by the Compensation
22 Board, but there must be some cases when a person is not
23 satisfied, where they were denied - and I can supply
24 them - and when they look in other places for medical
25 help they got it and compensation afterwards, but he was
26 denied of that first human right to get him back to his
27 health, to his previous state.

28 Now, it is a matter of common sense, as I
29 said, to know that reasonably sound appeal could not be
30 made without knowing the facts. How that could be done,



1 I heard many people appearing yesterday, during
2 yesterday's hearings saying that that is a very expensive
3 thing, that you have to get the transcript and the files
4 of the Compensation Board, that you have to suffer,
5 almost suffer the atmosphere of the court room. It is
6 a simple solution - access to the Act the same as we have
7 in courts. There is no secrecy in the courts. You come
8 to the court and you can examine your files, evidence,
9 any evidence. So, why are the files of the Compensation
10 Board so secret?

11 In the attached correspondence with the
12 W.C.B. (Exhibits No. 1 - 9) indicates clearly that the
13 refusal of the access to the Board records - (in this case
14 only to the X-Ray films) is based on the section 97 (1)
15 of the W.C.B. Act. and that the Board's medical records
16 are considered privileged, and therefore subject to
17 production only on the order of the Supreme Court of
18 Ontario. Chairman of the Board in his interview with
19 the Press of May 30, 1966 (Globe & Mail May 31, 1966)
20 stated that "Doctors's reports on Board's patients
21 are privileged in the same way that any doctor - patient
22 relationship is privileged". This interpretation of
23 the Board privilege is basically erroneous. Privilege in
24 a doctor's case means nothing else but that a doctor can
25 not disclose any information regarding his patient -
26 without the patient's consent. It certainly does not
27 mean that a doctor can refuse to disclose all medical
28 facts and information to the patient himself. To the
29 contrary.

30 And I will quote:



1 "The court frequently states that the relation
2 between the physician and his patient is a
3 fiduciary one and therefore the physician has
4 an obligation to make a full and frank dis-
5 closure to the patient of all pertinent facts
6 related to his illness" (Law Medicine
7 Research Institute, Boston University, 1963,
8 page 217).

9 Then I quote again from a book by
10 William C.J. Meredith, Q.C., page 142 of a publication of
11 1956:

12 "The duty of a surgeon to disclose to a
13 patient the relevant facts of the case and to
14 deal honestly with him as to the nature and
15 importance of an operation or other treatment,
16 has already been referred to". (Malpractice
17 Liability of doctors and Hospitals. Common
18 Law and Quebec Law)

19 I will not repeat these things. They are
20 in his book. It is clearly stated on many occasions that
21 the patient has a right to know what is going on. By
22 the refusal to disclose the medical facts - the Board
23 usurps the right of a patient - depriving him of his
24 good right to have information regarding his health con-
25 dition, of his natural right to decide about the way of
26 his treatment. Simultaneously, the Board exercises
27 doctors duty, in a manner, that could be considered as a
28 professional misconduct, by a physician. We feel that
29 medical facts cannot be considered privileged to the
30 patient. He has right to use this privilege and the



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Board has no legal or moral right to conceal the medical facts from the injured workman.



1 The W.C.B. goes even further, than withholding medical
2 facts from the workman:

- 3 1) by preventing in certain cases the
- 4 attending surgeon from giving full
- 5 information to the patient and
- 6 2) by refusing attending doctor access
- 7 to the Board's files.

8 This practice brings in some cases
9 disastrous consequences to an unaware patient - as in
10 fact in the case of Mrs. S. Ostrowski.

11 Medical facts of utmost importance for
12 her future were still concealed in the files of the Board
13 but never communicated and never could have been
14 available to her.-

15 They come to the open only as a
16 production of Dr. Lotto's file during his examination
17 for discovery.

18 Section 97 --- and after twelve years
19 almost after the treatment after the accident --- Section
20 97 of the Act is being used by the Board as an excuse
21 in refusing access to the X-rays in Board's possession.
22 This leaves patient without any possibility of checking
23 what and how has been done to his body, leaves him at
24 the mercy of an information very often casual, super-
25 ficial and inaccurate information given usually by
26 medically unqualified employee of the Board.

27 How many cases of disability
28 aggravation, how much unnecessary suffering, how many
29 thousand dollars could be saved, if workman, as a patient,
30 would be well informed about real extent of his disability,



1 about future dangers, that could be avoided?

2 To indicate my feeling, I will just
3 quote one fact. I think I can find somewhere the date
4 when I was inquiring in the Compensation Board about how
5 it came about to a change in the policy of the Board
6 regarding Mrs. Ostrowski's health. One operation was
7 wrong, another operation was decided, but we didn't know
8 even about the decision. I asked about some changes and
9 approval, official approval by the Board that the new
10 doctor has approved, authorized by the Board, and there
11 was that gentleman who had a big file in his hand, and
12 after a big while of talking, "That will not mean much
13 to your wife". It happened that my wife had a fracture,
14 dislocation of the hip since 1952. How can I rely on
15 such information of a man who doesn't even know what is
16 in the file? What is his critical assessment of the
17 case?

18 One of the most remarkable examples of
19 the discretion power conferred on the Board is
20 demonstrated by the Section 24 of the Act. Your
21 lordship, I come to this point only theoretically.
22 This section provides that any special surgical
23 operation or special medical treatment for a workman
24 may be furnished, in the interest of the accident fund -
25 if such an operation (or treatment) is the only means
26 of avoiding heavy payment for permanent disability.

27 Money - not workman's welfare and
28 future counts... I do not try to imply that The Workmen's
29 Compensation Board uses this always, but the Act itself
30 is unfortunately worded this way, that the main reason



1 of going to expense is to avoid heavy payment.

2 THE COMMISSIONER: They could have
3 left out the words "in the interest of the accident
4 fund".

5 MR. OSTROWSKI: In light of the above
6 section no one should be surprised that files are
7 considered so secret that even a Coroner's Jury, in the
8 Board's opinion, has no right to request their files.

9 As I mentioned previously, the main
10 point or the main reason for refusing access is that
11 the files have privilege. With a few justified excep-
12 tions, proceedings before any courts are open not only
13 to the interested parties, but also to the public, and
14 that includes doctors' opinions, assessment, correspon-
15 dence, everything that was in the case. Why such an
16 extraordinary precaution only when dealing with the
17 Compensation Board? That I cannot understand. It may
18 be explained to some extent ~~that~~ the Ontario Medical
19 Association try to make the life of its members easier,
20 but where lies the prime responsibility of the physician?
21 To the patient or to the Board? I have a copy of the
22 Medical Association's brief, and they say the primary
23 responsibility is to the patient. Why do medical men
24 think only in the categories of their own opinions?
25 Would the interest of the patient and the Board be
26 served better by plain truth and medical fact? It is
27 this kind of medical diplomacy we heard of yesterday,
28 I think by Dr. Melvin, how he communicates, one to the
29 Board, one to the patient, perhaps one to another
30 doctor. He said they are different, but they are all



1 honest. I think there is only one truth and only one
2 honesty. There are three different reports. Something
3 is not right --- not saying something, withholding
4 something.

5 THE COMMISSIONER: I think he intended
6 to say that they don't all talk the same language. A
7 report may be understood by a doctor, when it might be
8 misunderstood by a lawyer.

9 MR. OSTROWSKI: I think it is quite
10 clear that there is a great difference in that
11 correspondence when they are given to a patient, to
12 a board or to another lawyer.

13 So in summarizing, we respectfully make
14 the following submissions:

15 1) To establish the right of appeal on
16 question of law to the courts.

17 2) To determine the right of interested
18 party to be present at all hearings during the
19 administrative review or appeals within the Board
20 structure.

21 3) To establish that directly interested
22 parties have access to the Board records.

23 4) To clarify the interpretation of
24 privilege regarding medical facts of injured workmen.

25 5) To include in the Section 24 of the Act
26 a clause establishing as a first justification for a
27 special surgical treatment - the welfare of the injured
28 workman.

29 I thank you very much, your lordship,
30 for the chance to present my most personal resume, but



1 having been in this country for almost 20 years and
2 dealing with the Board for 17 years, I had some remarks
3 and I am happy to present them to your lordship.

4 THE COMMISSIONER: I want to thank you,
5 Mr. Ostrowski. It has been a very careful preparation;
6 it has obviously involved a lot of research, and we
7 appreciate your bringing these matters before us, and
8 we will certainly consider them.

9 Mr. Estey may ask you some questions.

10 MR. ESTEY: Mr. Commissioner, we
11 perhaps should get on the record what Mr. Ostrowski's
12 status is.

13 Are you an employer or an employee?

14 MR. OSTROWSKI: Well, maybe it is a
15 different situation. We started as a partnership coming
16 to this country and we were entitled to the insurance
17 as partners. Some partners dropped out during the
18 seventeen- or nineteen-year period, but we are still
19 insured as partners with the Compensation Board. At
20 the same time I am an employer during the summer season,
21 with about twelve or fourteen people, and have paid all
22 assessments for about 17 years to the Compensation Board.

23 MR. ESTEY: To be sure we have your
24 point on this question of appeals, do I take it from
25 your brief, which unfortunately I just got yesterday,
26 that you have had some legal training somewhere? Are
27 you a lawyer originally?

28 MR. OSTROWSKI: I was a lawyer or
29 barrister, as you will say in England, until the war
30 broke out, for 18 years before the Second World War broke



1 out.

2 MR.ESTEY: I take it you are dividing
3 the right of appeal into two different parts, and the
4 first part is the right of the workman to appeal inside
5 the Board structure against a denial of the claim.

6 MR. OSTROWSKI: Yes.

7 MR. ESTEY: And your general position
8 on that point, if I heard you rightly, is that one must
9 be practical and realize that the Board's role in those
10 appeals and in these adjudications is that of the
11 protector of the fund.

12 MR. OSTROWSKI: Yes.

13 MR. ESTEY: And therefore the workman
14 should have some kind of a right to go to an independent
15 party for an adjudication in some cases.

16 MR. OSTROWSKI: Yes.

17 MR. ESTEY: That is your position?

18 MR. OSTROWSKI: Yes.

19 MR. ESTEY: Then on the second
20 category of appeals you are saying that where a matter
21 of law arises somebody in the state higher than the
22 Workmen's Compensation Board should be available at the
23 complaint of someone affected by the Board to adjudicate
24 whether or not the Board has interpreted the law
25 correctly.

26 MR. OSTROWSKI: Yes.

27 MR. ESTEY: That is your position?

28 MR. OSTROWSKI: That is my position.

29 MR. ESTEY: The third topic you have
30 raised, that is dealing with medical reports, your brief



1 is a little less clear than on the appeals. Attached to
2 your brief is a series of nine letters, which I have had
3 to read very quickly, but I detect that you tried to
4 get from the Board some X-rays in connection with the
5 treatment of your wife's ankle.

6 MR. OSTROWSKI: Hip.

7 MR. ESTEY: In any event, there were
8 some X-rays. What I would like to know is this, if you
9 can remember. When this injury to the hip occurred you
10 went to a doctor?

11 MR. OSTROWSKI: Yes.

12 MR. ESTEY: And the doctor ordered some
13 X-rays to be taken?

14 MR. OSTROWSKI: Yes. That was in 1952.

15 MR. ESTEY: And these X-rays were taken
16 by some doctor in private practice, were they?

17 MR. OSTROWSKI: No, in the hospital.

18 MR. ESTEY: Where was that?

19 MR. OSTROWSKI: In Huntsville.

20 MR. ESTEY: In the Huntsville Hospital?

21 MR. OSTROWSKI: Yes. I tried to get them,
22 and they are destroyed. After six years all X-rays are
23 destroyed or sold to the manufacturers.

24 MR. ESTEY: To be cut up into film again?

25 MR. OSTROWSKI: Yes.

26 MR. ESTEY: You went to this doctor,
27 and he was your family doctor, was he?

28 MR. OSTROWSKI: Yes.

29 MR. ESTEY: A local doctor?

30 MR. OSTROWSKI: A local doctor, casually,



1 who was presently available.

2 MR. ESTEY: At the same time you filed a
3 claim for compensation?

4 MR. OSTROWSKI: Yes.

5 MR. ESTEY: And that doctor made a
6 report for the Board and sent that along also?

7 MR. OSTROWSKI: After the whole
8 proceedings, and there was a telephone call the following
9 day, but in the busy course of things the doctor has to
10 send the report.

11 MR. ESTEY: I am trying to find out who
12 the doctor was. You went to the doctor. He took the
13 X-rays in the hospital, and were the X-rays sent to the
14 Board?

15 MR. OSTROWSKI: I don't know. I am sure
16 they were left in the hospital, because Mrs. Ostrowski
17 was X-rayed immediately after admittance to the Western
18 Hospital in Toronto. That was on the third day or second
19 day after the injury.

20 MR. ESTEY: So she was removed from the
21 Huntsville Hospital to the Western Hospital in Toronto?

22 MR. OSTROWSKI: Yes.

23 MR. ESTEY: And more X-rays and more
24 treatment down there?

25 MR. OSTROWSKI: Yes.

26 MR. ESTEY: And all this was paid by the
27 Board?

28 MR. OSTROWSKI: Yes.

29 MR. ESTEY: And you for some reason
30 wanted to get a copy of those X-rays?



1 MR. OSTROWSKI: Only now, after fourteen
2 years.

3 MR. ESTEY: From the letter of May 13th,
4 1966, you tried to get a copy of the X-rays. Why did you
5 want a copy of the X-rays?

6 MR. OSTROWSKI: Because Mrs. Ostrowski
7 has been refused further treatment by the doctor in
8 Toronto, the doctors which are authorized by the Work-
9 men's Compensation Board. The first operation was a
10 failure. She went to the operating room with 25%
11 disability, and after the two operations, one of them a
12 failure and another corrective surgery, she has 65%
13 disability, so we want to find out, and I want to do it
14 as well, in other places if there are any means, any way
15 of improving her health.

16 MR. ESTEY: So what you want to do is
17 consult another doctor, another surgeon, to see what can
18 be done?

19 MR. OSTROWSKI: Yes.

20 MR. ESTEY: And you want to give the
21 other doctor a history of the case?

22 MR. OSTROWSKI: Yes.

23 MR. ESTEY: And you wrote to the Board
24 and the Board said they couldn't tell you because it was
25 confidential information?

26 MR. OSTROWSKI: Yes.

27 MR. ESTEY: Have you got the documents
28 yet?

29 MR. OSTROWSKI: No. It is only in the
30 case that the Supreme Court of Ontario will order, but we



1 will have to wait for that. The matter is very simple.
2 There are some changes occurring in the bone, and the
3 situation is such that treatment which was possible a
4 year ago or this spring may not be possible next year.

5 THE COMMISSIONER: If I may interrupt
6 for a moment. Did you have another surgeon come into the
7 picture and ask for them? Would he be refused, if you
8 were asking advice of another specialist? Would he seek
9 to have the Board disclose this information?

10 MR. OSTROWSKI: First of all, your
11 lordship, the result of the first operation was not told
12 to us, neither to my wife nor to me, and to find out
13 what is wrong, why there are these deformities after
14 the operation, which should have corrected any of these
15 deformities, we have to go to New York just to get
16 independent assessment, and then we found there is a
17 leg shorter by five centimetres, there is flexion
18 deformity, and so on. Dr. McLaughlin said 45% flexion
19 of the leg. She is a cripple, as Dr. McLaughlin said.
20 But to get a good assessment we have to have this
21 history, because every body is acting a different way.

22 MR. ESTEY: Can I interrupt you for just
23 a moment? We don't want to hold up the other people
24 here today, but I do want to find out one or two things
25 from you. In the correspondence there is reference to
26 a Dr. Harris.

27 MR. OSTROWSKI: Yes.

28 MR. ESTEY: Was that the first doctor
29 you went to?

30 MR. OSTROWSKI: No, the first doctor



1 was Dr. Lotto.

2 MR. ESTEY: Was he engaged by the Board?

3 MR. OSTROWSKI: Yes.

4 MR. ESTEY: What you are saying is that
5 you would like the reports of the first two doctors who
6 attended upon your wife for compensation and you want
7 reports from the doctors who successively operated on
8 your wife?

9 MR. OSTROWSKI: Yes.

10 MR. ESTEY: And you asked the Board for
11 these and the Board said, "These are Board documents and
12 you cannot have them"?

13 MR. OSTROWSKI: Yes.

14 MR. ESTEY: That is the thing in a
15 nutshell?

16 MR. OSTROWSKI: Yes.

17 MR. ESTEY: The Commissioner asked you
18 whether another doctor has been engaged by you. Have
19 you gone to another doctor?

20 MR. OSTROWSKI: No. One doctor should
21 really have good assessments.

22 MR. ESTEY: Have you gone to another
23 surgeon to have your wife examined?

24 MR. OSTROWSKI: No, not recently.

25 MR. ESTEY: Therefore no other surgeon
26 has asked the Board for these reports?

27 MR. OSTROWSKI: No. But we asked Dr.
28 Harris, and he was refused.

29 MR. ESTEY: You asked him and he said
30 the Board would not let him have the documents; is that



1 right?

2 MR. OSTROWSKI: That is right.

3 MR. ESTEY: And I think the Board
4 referred you to Section 97 of the Act, and you have that
5 in your brief.

6 MR. OSTROWSKI: Yes.
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1 MR. ESTEY: One last question. You mentioned
2 X-Rays. When you went to the Huntsville Hospital for
3 the X-Rays, did they refuse to give them to you?

4 MR. OSTROWSKI: Well, they were already
5 destroyed.

6 MR. ESTEY: So that you don't know whether
7 they would have given them to you or not?

8 MR. OSTROWSKI: I had no idea whether they
9 would give them or not.

10 MR. ESTEY: And the Western Hospital X-Rays,
11 are they also not available to you?

12 MR. OSTROWSKI: No.

13 MR. ESTEY: Thank you, Mr, Ostrowski.

14 THE COMMISSIONER: Thank you.

15 MR. ESTEY: The Labourers' International,
16 Mr. Commissioner, have in their brief references to
17 matters which were discussed yesterday under the heading
18 of Appeal Procedures. Mr. Koskie is here this morning
19 with his colleagues.

20 MR. KOSKIE: If it please, Mr. Commissioner,
21 my name is Raymond Koskie.

22 Mr. Commissioner, I appear on behalf of the
23 Labourers' International Union of North America, Local
24 183, Toronto, Ontario. I appear as counsel on behalf
25 of this union. The Labourers' International Union of
26 North America, Local 183, appreciates the opportunity
27 of presenting to the Commissioner its submissions and
28 recommendations in connection with the Workmen's Com-
29 pensation Act of Ontario. I wish to point out to the
30 Commissioner that this Local was established in Toronto



1 during October, 1952 and at present represents approx-
2 imately 3,000 workers in Ontario. The work jurisdiction
3 of our Local embraces, for the most part, heavy construct-
4 ion work which includes work on bridges, subways, tunnels,
5 roads, sewers and water mains. Because of the many
6 extraordinary hazards facing our members in this type of
7 work and the relatively high accident rate which almost
8 inevitably must follow, we have always been very concerned
9 with Workmen's Compensation. Often our unique position
10 of accident exposure has enabled us to perceive with a
11 particular clarity some of the hard realities facing the
12 unfortunate victim of industrial accidents in Ontario.

13 Perhaps even more significant, however, is
14 the fact that we are extremely conscious of the importance
15 of accident prevention. We are firmly convinced that
16 accident compensation and accident prevention are in-
17 separable fields of inquiry and that safety must be one
18 of the most essential underlying considerations in an
19 inquiry of this type.

20 THE COMMISSIONER: Are you intending to read
21 all of your brief, Mr. Koskie?

22 MR. KOSKIE: No, My Lord. It is merely the
23 introduction.

24 THE COMMISSIONER: Very well.

25 MR. KOSKIE: We take pride in being one of
26 the few Unions, if any, to establish a Safety Department
27 within a Local in Canada. Our Department was established
28 shortly after the inception of our Local, and has been a
29 powerful force in the heavy construction industry,
30 especially since the Hogg's Hollow disaster of March,



1 1960, in which a number of our men met a tragic death.
2 The functions of this Department have been to investigate
3 various construction projects to ensure that maximum
4 safety conditions are provided and enforced, and to make
5 various submissions and recommendations to Provincial and
6 Municipal levels of Government in the interests of
7 safety and accident prevention.

8 It is with a sense of great concern that we
9 humbly submit our submissions and recommendations to this
10 Commission. The scope of this Brief has not permitted
11 the fullest and most extensive elucidation that we might
12 have wished. However, we would welcome an opportunity
13 to present several witnesses at such time as the
14 Commission shall deem feasible, including some which we
15 intend to produce today. It is our belief that their
16 testimony would be extremely helpful in future delibera-
17 tions of the Commission.

18 Now, Mr. Commissioner, as indicated in the
19 introduction which I have just read, much of the Brief
20 which the Labourers' Union has submitted pertains to
21 safety and accident prevention and we do not, of course,
22 today, intend to go into this because, of course, this
23 is not the topic which has been scheduled, but I do wish
24 to point out that at the subsequent hearings we will go
25 into this in much greater detail. We do, however, Mr.
26 Commissioner, have certain submissions albeit brief in
27 connection with the topics with which we are concerned
28 today. But, before proceeding to discuss those topics,
29 Mr. Commissioner, I have beside me seated to my left
30 Mr. Gerald Gallagher who is the Secretary-Treasurer of



1 the Labourers' Union, Local 183, and Mr. Gallagher has
2 been somewhat concerned with the matter of safety in the
3 construction field and, in particular, has been involved
4 in the investigation and study of Caisson Disease.

5 Mr. Gallagher has requested an opportunity,
6 Mr. Commissioner, to make a statement in connection with
7 a brief which has already been submitted to you, Mr.
8 Commissioner, on behalf of the Canadian Association of
9 Professional Safety Men, and I would like permission from
10 you, Mr. Commissioner, to ask Mr. Gallagher to deliver
11 this statement to you which Mr. Gallagher and myself both
12 feel is of some concern to the basis of this entire
13 inquiry and is of some urgency and should be dealt with
14 today. It is a very brief statement, Mr. Commissioner,
15 and I would ask leave for Mr. Gallagher to present this
16 to you at this moment before we proceed further.

17 MR. ESTEY: I indicated that this safety
18 question is not, of course, on the agenda for which we
19 have these people present today, and we are trying now
20 to deal with and dispose of Appeals and then go to
21 Claims Adjudication. Safety is a major topic which will
22 be the subject of a similar intensive investigation by
23 the Royal Commission, but not today. I don't think we
24 have any objection to the statement except that it is
25 an imposition perhaps on everybody else who came here to
26 discuss Appeals and Claims Adjudication.

27 THE COMMISSIONER: Well, Mr. Gallagher can
28 make his submissions to me if he wishes to later or
29 elsewhere, but I don't think at the moment this hearing
30 here should be delayed by going into safety matters



1 because it is something that is going to involve a fairly
2 extensive review before this Commission.

3 MR. KOSKIE: Mr. Commissioner, I should
4 clarify this. The statement which Mr. Gallagher wishes
5 to make to you, sir, is not in connection with safety
6 at all. I have only mentioned that as background of Mr.
7 Gallagher's experience. It has nothing to do with the
8 specific topic except it does deal with the submission
9 of a particular brief and certain subsequent events which
10 have recently occurred, sir, which I respectfully submit
11 are of importance to the entire inquiry and to everybody
12 concerned here. The statement which Mr. Gallagher wishes
13 to make will only take, I will imagine, no more than
14 three minutes, and I feel, Your Lordship, that the
15 time --

16 THE COMMISSIONER: Well, if what Mr.
17 Gallagher is going to say is not going to take more than
18 three minutes, perhaps we should hear it and get it over
19 with.

20 MR. KOSKIE: I appreciate that. Where would
21 you prefer Mr. Gallagher to stand?

22 THE COMMISSIONER: Mr. Gallagher can stand
23 right there.

24 MR. GALLAGHER: Thank you very much, Mr.
25 Commissioner, for your indulgence and I certainly don't
26 intend to delay you very long. I want to make the remark
27 that the Canadian Association of Professional Safety
28 Men was established in February of this year for the
29 purpose of providing assistance to persons involved --

30 THE COMMISSIONER: That is all in the Brief



1 that was filed by the Safety Mens' Association.

2 MR. GALLAGHER: I want to say this as clearly
3 as I can and as briefly as I can, that the Canadian
4 Association of Professional Safety Men submitted a Brief
5 to yourself, Mr. Commissioner, and subsequently withdrew
6 it under pressure from the I.A.P.A., which is the
7 Industrial Accident Prevention Association. One of the
8 men involved in this Association was taken into the
9 office and was told that if he didn't withdraw this he
10 might be fired, and he was told that only his long
11 service with the I.A.P.A. which is part of the Compensa-
12 tion Board or whose funds come from the Compensation Board
13 saved him. We feel it is a shocking situation that
14 affects the whole inquiry in my view that this kind of
15 thing should be allowed to go on.

16 These Safety Men had a meeting at which
17 seventeen of their executive were present and had a vote
18 on whether to withdraw this brief or not. Eight voted
19 against presenting the brief, eight abstained and one
20 voted for presenting the brief. This is after they had
21 gone through it and put it forward, and so on, and we
22 have evidence that there is undue pressure on these
23 Professional Safety Men and that the field of accident
24 prevention is the most important thing of all I believe.
25 The Compensation Act itself and the things that are wrong
26 with it or that we feel are wrong with it --

27 THE COMMISSIONER: Mr. Gallagher, may I
28 say this: We have been told that the Professional Safety
29 Men about which we had, if I may say so,
30 some difficulty learning who they were, but we finally



1 did, had withdrawn this brief. Now, I can assure you
2 that the brief has been read, counsel is aware of what
3 the brief contained even though it has been withdrawn,
4 and certainly it has raised some questions that he
5 will be proceeding with when we deal with the question of
6 compensation.

7 MR. GALLAGHER: Very fine, Mr. Commissioner.

8 THE COMMISSIONER: If there is some complaint
9 to be made about the Board or the Safety Prevention
10 Association which works under the Board, then I will
11 ask you to make it at that time.

12 MR. GALLAGHER: Thank you very much, Mr.
13 Commissioner. I might only add --

14 THE COMMISSIONER: I can assure you that
15 any material that was in the brief even though it has
16 been withdrawn will furnish some questions for counsel.

17 MR. GALLAGHER: This was the answer I was
18 hoping you would give me, Mr. Commissioner. We are
19 very grateful to you. I think a complete investigation is
20 required, because the presentation of our brief states
21 that enforcement of this legislation is not really being
22 done properly and this is relevant, I think. These
23 very men who look after the safety of our people have
24 not got enough courage to present a brief. In that case,
25 in my view, they should not be in a position to try to
26 save the lives of my people and therefore an investigation
27 by this Commission should be intense to find out the
28 reason why they were forced to withdraw their brief, Mr.
29 Commissioner.

30 THE COMMISSIONER: Thank you.



1 MR. KOSKIE: I appreciate your indulgence in
2 this matter, Your Lordship.

3 Mr. Commissioner, dealing with the topics
4 involving Appeal Procedure, the first point that the
5 Labourers wish to make is in connection with Administra-
6 tive Appeals within the Board's structure.

7 THE COMMISSIONER: At what page of your
8 brief?

9 MR. KOSKIE: At page 19 of the brief, Mr.
10 Commissioner, sub-paragraph (3):

11 (a) Advisory Letters In Two Languages.

12 Section 72 of the ACT prohibits a review of
13 any Board action or decision by any Court. However,
14 under the authority of Section 72 (3) of the Act, the
15 Board is empowered to reconsider, rescind, alter or
16 amend its own decisions, and to this extent, it has set
17 up an internal appeal procedure whereby an injured
18 workman may appeal to an Appeal Tribunal for reconsidera-
19 tion of his claim.

20 The usual practice of the Board, following
21 the rejection of a claim by the Review Committee, is to
22 send a letter to the injured workman advising him of the
23 rejection and informing him of his right to appeal to the
24 Appeal Tribunal. However, many of the men receiving these
25 letters speak and read a language other than English,
26 so are unable to fully comprehend the valuable right to
27 appeal being afforded to them. Therefore, in cases of
28 injured workmen known to the Board to be unable to read
29 English, we would urge that two copies of such letters
30 be sent, one in English and one translated into the



1 native language of the particular workman receiving it.

2 (b) Right to Counsel.

3 THE COMMISSIONER: How far do you want to
4 press that? There are a great many languages in the
5 world. There are a preponderance of Italian workers in
6 the city, other than English. Of the foreign element a
7 lot are Italian. In your construction you will know in
8 your particular field what foreign groups they are, but
9 would not you restrict that submission to those of
10 fairly large denomination? I think perhaps the Board
11 does that now, does it not?

12 MR. KOSKIE: It has been our experience,
13 Mr. Commissioner, that in these matters we have acted
14 for the Labourers' Union in compensation matters and in
15 none of the cases I have seen have letters been sent to
16 the claimants in two languages in cases where the
17 claimants are mostly Italian persons and are
18 unable to read or understand the English language. I
19 certainly have not seen it and my clients have pointed
20 that out to me.

21 MR. ESTEY: How could you tell what language
22 the workmen spoke by looking at the file?

23 MR. KOSKIE: In many cases, Mr. Commissioner,
24 the workmen have communicated in one way or another to
25 the Workmen's Compensation Board and surely at the
26 initial communication the Workmen's Compensation Board
27 could very easily find out what language this person
28 understands and reads. That is a very simple matter.
29 For example, the employee, if my understanding is correct,
30 is required to complete an accident report which we will



1 deal with later, but at the initial stages I think this
2 would be a very simple matter for the investigating
3 officer of the Workmen's Compensation Board to ascertain
4 the native language of this person.

5 THE COMMISSIONER: Is it convenient to go on
6 and finish and then we will come back to that?

7 MR. KOSKIE: Yes. What I propose to do,
8 Mr. Commissioner, Mr. Gallagher is with me and he is
9 prepared to comment and give his personal experience in
10 connection with some of those matters. If he could do
11 that as I go along it might be better.

12 THE COMMISSIONER: All right.

13 MR. KOSKIE: Next, I would like to deal with
14 the Right to Counsel --

15 THE COMMISSIONER: Are you going to go any
16 further then with the matter on which you have just
17 spoken?

18 MR. KOSKIE: Nothing further on that matter.

19 It is further recommended that these letters
20 advise each workman of his common law right to retain
21 counsel for presentation of his case before the Appeal
22 Tribunal.

23 Now at this stage, Mr. Gallagher has had
24 personal experience in these particular matters, Mr.
25 Commissioner. I would like him to relate those to you.

26 MR. GALLAGHER: Mr. Commissioner, on many
27 occasions I have had to appear before the Board and, in
28 one particular case - and it is quite general in the
29 labour movement - we are told that we would do much
30 better to present our cases as Union representatives

1 rather than involving lawyers or advice of that kind. I
2 feel that this should be stopped. There should not be this
3 kind of statement. This kind of statement should not be
4 sent out by the Board at all. It gives an impression
5 that the lawyers are going to foul the whole thing up
6 on you and they are going to be too technical and "we
7 can't lean backwards for you as we have done in the past,"
8 and so on.

9 On occasions, the Board have been very kind
10 to us and to our organization. I am not suggesting that
11 they have not, but this kind of a feeling being sent out
12 that you must not use lawyers is very bad, and I think
13 it should be made clear that they have the right to have
14 counsel.

15 THE COMMISSIONER: Some of the criticism
16 here has been that there is excessive legal appearance
17 before the Appeal Tribunal, and for that reason they
18 don't permit cross-examination and that affects that
19 characterized procedure in a court. But I was not aware
20 that they suggest that you couldn't use lawyers.
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/SS

1 MR. GALLAGHER: Well, I can assure you

2 I am making that statement here, and I will quote one
3 case in particular, Stanley Kowalski, Claim No. 5981349.
4 He appeared before the Appeal Tribunal, and one of the
5 members of the Tribunal suggested to me that we would do
6 much better without a lawyer to assist me. Now, I am not
7 competent. I am only a labourer's representative, and I
8 am not competent to deal with the very learned Appeal
9 Tribunal, which, incidentally, has a lawyer on it, and
10 I think we are at a distinct disadvantage when we have
11 a lawyer on the Appeal Tribunal. He will on occasion
12 cross-examine some of the people I have appeared for,
13 and I am not ashamed to admit it, that I am not competent
14 to face this lawyer. Some of the cases are very
15 complicated indeed; there are phrases and phraseology
16 used which I don't understand.

17 THE COMMISSIONER: Is there anyone there
18 representing industry, to argue the case for industry
19 before the Board?

20 MR. GALLAGHER: I think that they can.
21 In the case I was representing there hasn't been industry
22 represented except on the Board itself. I suppose it is
23 supposed to be a balance of labour and management. But
24 I don't object to industry having legal representation if
25 they want to. We are told we are not to use lawyers.
26 I think the matter is too complex, that we should be
27 allowed to have a lawyer if we want one.

28 THE COMMISSIONER: Well, you can, of
29 course, have a lawyer if you want one. What you suggest
30 is that some person on the Board has suggested to you



1 that you won't do as well as you would with somebody in
2 the union.

3 MR. GALLAGHER: It is a general
4 statement in seminars of the Compensation Board, and so
5 on. This has been made quite clear to us. It puts you
6 in the position that you are afraid to get a lawyer
7 because the Board has already told you that you will do
8 better without one. You have to do the best you can for
9 the person you represent, but you are told not to bring
10 one.

11 THE COMMISSIONER: Would it satisfy you
12 if the person there did all the examining for both the
13 Board and the claimant?

14 MR. GALLAGHER: I don't quite follow
15 you, Mr. Commissioner.

16 THE COMMISSIONER: The suggestion is
17 made here by Dr. Melvin --- it was certainly made here
18 yesterday --- that to get away from the legalistic
19 atmosphere where somebody represents the claimant and
20 somebody represents the Board it would be far better to
21 have one man there who was a full-time employee who
22 acted for both the claimant and the Board in bringing
23 the material before the Board and got away completely
24 from examination by representatives, in this case, of
25 the claimant. This suggestion has been made. You haven't,
26 however, had an opportunity to consider that?

27 MR. GALLAGHER: No, I really haven't.
28 I think I won't belabour this point too much. For
29 example, on the medical evidence, which is really the
30 whole basis of claims, everything depends upon it. To



1 understand the medical evidence, we simply do not
2 understand the language and therefore we are not
3 competent. I wish I were, but I am quite honest and
4 frank when I tell you that I don't understand the
5 language, and for that reason we find complex cases which
6 should be made clear to all in correspondence with the
7 Board and that they should have the right to have
8 counsel if they so desire it.

9 MR. KOSKIE: In other words, Mr.
10 Commissioner, I think that Mr. Gallagher is suggesting,
11 if I may put it in perhaps simpler terms, that rather
12 than discourage the retaining of legal counsel it should
13 be at least pointed out to the individual claimant that
14 they have this right, but because of what Mr. Gallagher
15 says about discouraging retaining counsel, it should be
16 made quite clear that they are entitled to it.

17 Now, next we deal with the question of
18 subpoenas, Mr. Commissioner.

19 Subpoenas

20 On a number of occasions when it has
21 been necessary to subpoena witnesses on the appeal
22 of an injured workman, the Appeal Tribunal has refused
23 to issue the necessary subpoenas at the request of
24 counsel for the appellant. Again, this has imposed an
25 undue hardship in the presentation of the appellant's
26 case. We recommend that this practice be terminated.

27 THE COMMISSIONER: You are on (d) now,
28 are you, subpoenas?

29 MR. KOSKIE: Yes.

30 THE COMMISSIONER: What about (c)?



1 MR. KOSKIE: I am trying to follow
2 your schedule, Mr. Commissioner. I am jumping in my
3 brief. Mr. Gallagher has certain experiences in
4 connection with the issuing of subpoenas, and the attempt
5 to obtain them. I would like to file with the
6 Commission a copy of a letter from the Workmen's
7 Compensation Board dated August the 26th, 1966, addressed
8 to my firm, that is Robins & Robins, in connection with
9 Claim No. 6670944, re Domenico Nesci.

10 THE COMMISSIONER: I think this is
11 the first of any exhibits.

12 MR. ESTEY: Yes.

13 THE COMMISSIONER: Then, Mr. Secretary,
14 would you mark that as Exhibit 1.

15
16 ---EXHIBIT NO. 1:

Copy of letter from The
Workmen's Compensation
Board to Robins & Robins
dated August 26, 1966.

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18
19 MR. KOSKIE: This is a letter from
20 The Workmen's Compensation Board dated August 26th, 1966,
21 addressed to the law firm of Robins & Robins and marked
22 to my attention, in connection with Claim No. 6670944 re
23 Domenico Nesci. I may say, Mr. Commissioner, in
24 connection with Mr. Nesci, Mr. Nesci is a member of the
25 Labourers' Union, Local No. 183. The letter is very brief.
26 It reads:

27 "We wish to acknowledge your
28 letter of August 23, 1966, and
29 note your postscript which you
30



1 requested that Mr. DiRagno be
2 subpoenaed to attend the hearing
3 scheduled for September 8, 1966,
4 at 9:30 a.m.

5 "It is not the policy of the
6 Appeal Tribunal to subpoena any
7 witnesses to appear before the
8 Appeal Tribunal. If you or your
9 client are not successful in
10 arranging for Mr. DiRagno to
11 appear, the Appeal Tribunal will
12 consider a statutory statement
13 from Mr. DiRagno."

14 I file that with the Commission.

15 THE COMMISSIONER: You could have an
16 investigator go and see him.

17 MR. KOSKIE: The Board's procedure is
18 that by the time that the matter comes before the Appeal
19 Tribunal an investigator has already spoken to all these
20 persons, and in our experience they have never offered
21 to speak to these persons again, and this is where we
22 have requested subpoenas. Many of these persons are
23 somewhat reluctant to give evidence because they are
24 concerned with their jobs; and it is also difficult to
25 get them to sign statutory statements for the same
26 reason. In other words, there must be some compelling
27 force to get them to appear before the Appeal Tribunal.
28 For this reason Local 183 has been actually hampered in
29 the preparation of their case.

30 THE COMMISSIONER: What you are asking



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1 is that the Board subpoena him. Would it be satisfactory
2 to have the right of subpoena given to the labourer and
3 have him exercise it himself?

4 MR. KOSKIE: Yes, that is true, Mr.
5 Commissioner.

6 MR. ESTEY: Actually Section 65, if
7 invoked, would be the same powers that the Board operates
8 under, anyway, would it not?

9 MR. KOSKIE: That is right. We have no
10 doubt that the Board has the power to compel attendance
11 of witnesses, but the objection the Labourers' Union
12 have is that they have refused to exercise this power
13 except under what they call exceptional circumstances.

14 MR. ESTEY: But you cannot compel them
15 to go.

16 MR. KOSKIE: That is right. Of course,
17 they can refuse to sign the subpoenas. I will call
18 upon Mr. Gallagher to give evidence on the experience
19 he has had in connection with the obtaining of doctors
20 to attend these hearings.

21 MR. GALLAGHER: Mr. Commissioner, I
22 will be very brief, because Mr. Koskie has given you
23 most of the points we have here. In all compensation
24 cases the vital thing is the evidence of the doctor,
25 always, and with all due respect to the medical
26 profession, it is very difficult to get them to volunteer
27 to come and give evidence. We know they are extremely
28 busy, but in some cases we ought to be able to bring
29 forward our own medical evidence and confront the
30 doctors with their statements and be allowed to cross-



1 examine or establish what is necessary to come to the
2 truth. We find that the doctors say that the man is
3 fit to go back to work, and we have men walking around
4 the street today who were declared fit fifteen years
5 ago and have not been able to work since. To be able to
6 get our point across to them, the point of appeal, they
7 read the medical evidence, and that's it. We don't see
8 it; there is no possibility of questioning or anything.
9 We feel this is an area where we should be able to
10 subpoena doctors to attend and back up their report to
11 the Board.

12 I don't think there is any necessity
13 for me to waste the time of this Inquiry on this, because
14 it is obvious we must have the right to bring these
15 people forward. They are on welfare, and so on.

16 THE COMMISSIONER: Here we come back
17 to this point we were discussing a moment ago. You are
18 asking for the right **not** only to bring the doctor there,
19 but the right to cross-examine him when he gets there.

20 MR. GALLAGHER: Perhaps I should leave
21 the legal statements to Mr. Koskie. It is getting the
22 evidence, not necessarily cross-examining. Perhaps it is
23 the wrong term. If he is going to deprive a family of
24 a livelihood by saying that a man is fit or unfit, he is
25 ~~going~~ to lose his compensation. In the case of a man
26 dying, where the widow is left with children, the
27 medical evidence is very important. We think it is vital
28 that we should be able to subpoena, especially subpoena
29 the doctors.

30 MR. KOSKIE: I should point out, Mr.



1 Commissioner, that there was a case involving a member of
2 the Labourers' Union, Local 183, Claim No. 6396812,
3 Domenico Orsi. In this case there was some difficulty
4 in obtaining the actual evidence of a physician. This
5 was an appeal before an Appeal Tribunal, and we were
6 unable to subpoena the doctor in that case who had
7 submitted reports to the Compensation Board. Finally he
8 was able to give evidence before the Board voluntarily,
9 after much persuasion, and it appears that the case was
10 won because of the evidence of the doctor, notwithstanding
11 the fact that this doctor had submitted a report to The
12 Workmen's Compensation Board. Therefore we say that to
13 impress the importance of the issuing of subpoenas.
14 The Labourers' Union certainly appreciate that doctors
15 are at a premium, they have other things to take care of,
16 but, on the other hand, the Labourers' Union have found
17 themselves at a disadvantage because they have been
18 unable to subpoena these doctors. I understand the
19 Board pays the fees of the doctor provided the appellant
20 is successful.

21 THE COMMISSIONER: Provided what?

22 MR. KOSKIE: I think --- I am not sure
23 about this --- provided the appellant is successful.
24 That is my understanding. This was the situation in
25 the Orsi case, in any event.

26 THE COMMISSIONER: Do the doctors' fees
27 depend upon the success of the appellant?

28 MR. KOSKIE: I certainly don't know.
29 I didn't investigate that policy of the Board. I don't
30 know how they calculate the fees. But the Labourers'



1 Union were informed by The Workmen's Compensation Board
2 that the fees of this particular doctor would be paid by
3 the Board. How much they were and how they calculated
4 this, I don't know. I am sure Mr. Estey will perhaps
5 advise the Commissioner further on that. It is part of
6 the internal procedure, of which we are not aware.

7 THE COMMISSIONER: Have you any
8 questions, Mr. Estey, upon this matter?

9 MR. ESTEY: Yes, I have, Mr. Commissioner.
10 Mr. Koskie, have you finished your
11 point?

12 MR. KOSKIE: I have finished on that
13 particular point, yes. I next intend to deal with the
14 access to records by representatives of the employees
15 and employers.

16 MR. ESTEY: I don't want to keep inter-
17 rupting, so I will take them all at one time.

18 THE COMMISSIONER: I am just wondering,
19 if we are going to break for ten minutes --- it is now
20 11:30 --- possibly we should do it now. We will resume
21 promptly in ten minutes' time.
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1 MR. ESTEY: What was the point you were going
2 on to, Mr. Kostie?

3 MR. KOSTIE: I was dealing with Access to
4 the Board's Records which I understand to be the third
5 heading in the Appeal Procedures, and I referred to page
6 20 of the brief, sub-paragraph (c) entitled "Evidence",
7 and if I may read:

8 The usual practice of the Board when inform-
9 ing an injured workman that his claim has been rejected
10 is to state the following:

11 "It is the opinion of the Review Committee
12 that the evidence on file fails to estab-
13 lish personal injury by accident arising out
14 of and in the course of the employment, and
15 accordingly rejects your claim".

16 After the Review Committee has rejected his
17 claim, a workman who wishes to appeal is able to obtain
18 upon request a summary of information upon which the
19 Review Committee has based its decision. However, in
20 virtually all cases, this summary is insufficient for the
21 proper preparation and presentation of an appeal, and
22 the claimant is forced to proceed before the Appeal
23 Tribunal in a position of distinct disadvantage, or to
24 abandon his appeal completely. We submit that this
25 practice of shielding evidence is contrary to the rules
26 of natural justice, and should be abolished immediately.

27 In this regard, Mr. Commissioner --

28 THE COMMISSIONER: I understand only about
29 four percent of claims are turned down. We hear a lot
30 about this and it is nonetheless important to those, of



1 course, who are turned down, the fact that there are very
2 few apparently turned down.

3 MR. KOSKIE: We are still concerned, Mr.
4 Commissioner, on taking the chance that one never knows
5 what will happen with a particular claim and one does not
6 want to leave any stones unturned, especially so when
7 the particular claimant has gone to the expense of re-
8 taining counsel.

9 THE COMMISSIONER: This is not the only
10 thing. I mean to say, I think there are some applications
11 by industry as well because they would like to go in on
12 the other side and start to fight some of these claims.
13 This is one of the great matters of concern for this
14 Commission, whether we should turn back the hands of
15 the clock in this respect, or whether it is desirable to
16 keep it the way it is even if there are occasional cases
17 where - or in any event, a proportion of cases where they
18 may feel that they should have had more information and
19 they should be allowed to fight the case on that basis.

20 MR. KOSKIE: Perhaps I can assist the
21 Commission. I do have some letters, just as an example,
22 to show the type of summary that is provided in these
23 cases.

24 THE COMMISSIONER: I wonder if it is not
25 sufficient if you file those, because we have had in
26 several submissions, maybe in yours, a letter set out in
27 full in which there are great reference to medical
28 terms and one thing and another which are very difficult
29 for the average person to understand, and that matter,
30 Mr. Gallagher has already referred to in fact.

MR. KOSKIE:

The purpose of filing this particular letter is



1 not so much because of the complexity of the medical terms
2 which I agree does exist in many of these summaries,
3 but sometimes it is quite the contrary, there is a
4 complete lack of any evidence and it is for this reason
5 that we wish to file a sample of a summary of evidence
6 which we have received and if I just may file with the
7 Commission, firstly, I refer to a quote on page 20 of
8 the brief, and to support that, I just merely wish to
9 file the letter which contains this quote, and it is a
10 letter from the Workmen's Compensation Board dated March
11 29th, 1966, addressed to Mr. Dominico Nesci, and it is
12 in connection with Claim No. 6670944. March 29th, 1966.

13 THE COMMISSIONER: That will be Exhibit 2,
14 Mr. Johnston.

15
16 ---EXHIBIT NO. 2: Letter from the Workmen's Compensa-
17 tion Board dated March 29th, 1966,
18 addressed to Mr. Dominico Nesci, in
connection with Claim No. 6670944.

19 MR. KOSKIE: I have an extra copy of that
20 for counsel.

21 Next, Mr. Commissioner, I wish to file with
22 the Commission a copy of a letter from the Workmen's
23 Compensation Board dated September 29th, 1965, addressed
24 to the Labourers' Union, Local 183, in connection with
25 the Board's Claim No. 6396812, in connection with Mr.
26 Dominico Orsi. Attached to it is what purports to be a
27 summary of the evidence in this particular case upon
28 which the claim of the claimant was turned down by the
29 Review Tribunal. I merely point out that this states
30 that a summary of the evidence is barely a half a page.



1 I have an additional copy of that for counsel.

2 Further, Mr. Commissioner, I wish to file
3 with the Commission a copy of a letter dated December
4 28th, 1965.

5 THE COMMISSIONER: The last one was Exhibit 3,
6 Mr. Johnston.

7
8 ---EXHIBIT NO. 3: Copy of letter from the Workmen's
9 Compensation Board dated September
10 29th, 1965, addressed to the Labourers'
11 Union, Local 183, in connection with
the Board's Claim No. 6396812, re
Mr. Dominico Orsi.

12 MR. KOSKIE: Messrs. Robbins & Robbins,
13 addressed to the Workmen's Compensation Board in
14 connection with Claim No. 6396812, Dominico Orsi, wherein,
15 Mr. Commissioner, I wish to read merely part of it, and
16 the letter states in part:

17 "In order that we may properly prepare for
18 this Appeal, we would appreciate it if you
19 would forward to us as soon as possible a
20 detailed report of all evidence which has
21 been presented to date in connection with
22 this claim. Would you also forward to us
23 copies of all medical reports and opinions
24 which have been submitted to the Board."

25 I file that with the Commission and I also
26 have a reply to that letter.

27 THE COMMISSIONER: You knew what the answer
28 would be when you wrote it?

29 MR. KOSKIE: I was instructed by my clients,
30 The Labourers' Union, in fact, to request this information.



1
2 ---EXHIBIT NO. 4: Copy of letter dated December 28th,
3 1965.

4 ---EXHIBIT NO. 5: Letter from Messrs. Robbins & Robbins,
5 addressed to the Workmer's Compensa-
6 tion Board, re Claim No. 6396812,
7 Dominico Orsi.

8 THE COMMISSIONER: There is no question about
9 what the Board's policy is.

10 MR. KOSKIE: I wish to file with the
11 Commission a copy of the Board's reply dated December
12 31st, 1965.

13 THE COMMISSIONER: Exhibit 5.

14
15 ---EXHIBIT NO. 5: Copy of the Board's reply dated
16 December 31st, 1965.

17 MR. KOSKIE: Wherein the information requested
18 was refused. I believe Mr. Gallagher may have some
19 comments in connection with the refusal of the Board to
20 reveal this medical evidence in all detail to us.

21 MR. GALLAGHER: Mr. Commissioner, I don't
22 think there is too much we can add because already I
23 have stated on the time I was up before that it is self-
24 evident by what we have put forward here in the matter
25 of Exhibits and so on. We simply must get all of the
26 evidence, we must understand it before we can properly
27 appeal a claim before a Tribunal. We simply haven't
28 got the evidence and many people are continually being
29 frustrated by this kind of a letter saying that accord-
30 ing to the evidence on file your claim is being rejected

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1 and people suffer great hardships because of this without
2 knowing why. Surely you cannot make a successful claim
3 if you have not got all the evidence that is in the
4 hands of the people on the other side. So, I don't
5 want to enlarge on this at all, other than to say that it
6 is self-evident that this is happening all the time.
7 Every letter we get almost refuses to supply us with
8 evidence and that should be complete in all detail and
9 we can't successfully appeal a claim if we don't know
10 what all the facts are. I don't think I need to enlarge
11 on that.

12 MR. KOSKIE: Mr. Commissioner, may I say this
13 that it has been the experience of the Labourers' Union,
14 Local 183, that one of the reasons why they have had to
15 or tried to subpoena several witnesses is because they
16 have not really seen all the evidence which went before
17 the initial Board on the initial claim, and they don't
18 really know upon which basis the decision was arrived at.
19 Since they don't really know that, they really don't
20 know the case they have to meet. In other words, a lot
21 of the evidence which they could be bringing in may or
22 may not be relevant. In other words, it may or may not
23 already be established satisfactorily before the Board
24 on the evidence on file. Once again, the Union has found
25 that they don't know this and, because they don't know it,
26 they feel, as I indicated before, they must not leave
27 any stones unturned because it is their duty to their
28 members to ensure that all available evidence be presented
29 on these appeals.

30 I think, perhaps, then, the two could go



1 hand in hand, that is, the releasing of more detailed
2 medical information and reports and the question of
3 subpoenas perhaps could be considered together on that
4 basis, that it might not be necessary to subpoena these
5 doctors, but we don't know sometimes. For example, in
6 the case which I mentioned to you, the Orsi case,
7 because we were deprived of the opportunity of examining
8 full details on medical reports, we had to ask the
9 doctor to attend and perhaps it would not have been
10 necessary to ask the doctor to attend if we could have
11 merely had on file a further report if we knew what he
12 had said earlier. In that case, the case was won on the
13 doctor's evidence.

14 I have no further submissions to make, Mr.
15 Commissioner, in connection with the matters involved in
16 Appeal Procedures. Perhaps Mr. Estey does have some
17 questions of either myself or Mr. Gallagher.

18 MR. ESTEY: Yes, Mr. Koskie, just two or
19 three, because I want to be sure we understand what your
20 Union wishes to say to the Commissioner. First of all,
21 this language question, I take it that what you are
22 proposing is that somewhere in the Board documentation
23 the question should be put to the claimant, the workman
24 whether he wishes the subsequent notices sent to him in
25 any language other than English.

26 MR. KOSKIE: We didn't say that he should be
27 asked whether he wishes to have it done. We say that the
28 Inspector for the Board, for example, should ascertain
29 the native language of the claimant and, in fact, send
30 him a copy of any subsequent correspondence in the words



1 of his native language. I don't think he should be
2 necessarily asked if he wishes it or not. I think in
3 order to eliminate any possibility that he should have
4 this in front of him.

5 MR. ESTEY: Is the claimant always not face
6 to face with a Board Inspector in all these cases?

7 MR. KOSKIE: I think that Mr. Gallagher
8 could perhaps answer that.

9 MR. GALLAGHER: Not really, they don't come
10 face to face with an Inspector but mostly when it goes
11 on into Appeal they generally do, but we, in the
12 Labourers' Union, send out notices to attend meetings,
13 we send it out in three languages - English, Italian
14 and Portugese, and it is not too difficult to do this.
15 I can see that if the Board has a name that is obviously
16 Italian, that they should send out a notice in Italian
17 or, in fact, it might be advisable to send out almost
18 all correspondence, maybe that is too far reaching, but
19 certainly if it can be solved in any way it is a very
20 important matter, because the Italian immigrants very
21 often, with apologies to the Italian, are illiterate
22 and need all the help they can get and certainly, when
23 they get something in English they go to someone who
24 they think can interpret it for them and who, in fact,
25 is probably just a little bit better than they are and
26 they get the wrong slant on the whole thing so they give
27 up the claim and don't bother claiming at all and their
28 families suffer a hardship as a result.

29 I don't know how it can be done, but we, as
30 I say, in our own organization send it out in three



1 languages. These are predominantly the people that are
2 in our organization, but certainly it is a very great
3 hardship on the immigrant to try to understand these
4 letters even if it is in Italian or their own language
5 I don't know what means the Board can come up with but
6 they have been very co-operative in the past and I am
7 sure they can come up with something.

8 MR. ESTEY: I see some of the safety notices
9 are printed in two or more languages and I suppose that
10 is what gave rise to your idea that perhaps these notices
11 should also come out, at least a very short one saying,
12 "You have a right of appeal" in their native language.

13 MR. GALLAGHER: I think this is absolutely
14 necessary.

15 MR. KOSKIE: May I say this, Mr. Commissioner,
16 that although in some instances an Investigator from the
17 Workmen's Compensation Board may not have direct contact
18 with the injured workman, on the other hand he does have
19 contact with other fellow workmen or with the employer
20 or both, in which case I am sure it would be a very
21 simple task in his contact with these persons to
22 ascertain the native tongue of the injured workman. I
23 don't think that would really amount to any problem at
24 all.

25 MR. ESTEY: You talked about on the question
26 of the right of appeal a case, Stanley Kowalski, and
27 you gave the number. I just want to be sure, is that a
28 case which reached the Appeal Tribunal, or was that a
29 Board case?

30 MR. GALLAGHER: It reached the Appeal



1 Tribunal after his case went on, I think I have it
2 somewhere, from 1963 and it ended up in 1966, three
3 years, of trying to get that one put right and the man
4 won the case on appeal.

5 MR. ESTEY: At the Appeal Tribunal?

6 MR. GALLAGHER: At the Appeal Tribunal.

7 MR. ESTEY: Mr. Gallagher, could you tell
8 us something about the proceeding at the Appeal Tribunal
9 from your viewpoint? First of all, did you appear
10 and represent the employee? In practice, do you do
11 more than simply point out to the Tribunal the facts as
12 you understand them from the summary of evidence, or
13 what exactly do you do?

14 MR. GALLAGHER: The men come to me and ask
15 me to represent them and I will go into a good deal of
16 research into the background of all the facts in the
17 matter of the accident and how it took place and will
18 probably have to investigate what further witnesses
19 than were there before and so on. It is quite an
20 involved thing. We go into great detail to make sure
21 that every possible fact that can help the man is
22 presented to the Appeal Tribunal.

23 MR. ESTEY: That is preparation, but what
24 happens at the Appeal Tribunal? Do you examine these
25 additional witnesses that you uncover in your investiga-
26 tion?

27 MR. GALLAGHER: We present our case to the
28 Appeal Tribunal and they let us make it almost in its
29 entirety with very little interruption, then afterwards
30 they go over it again and they question the man concerned.

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1 In this case, there was a Polish immigrant, Kowalski,
2 and he can speak very little English and he wanted to
3 bring his own interpreter. Maybe I am jumping ahead of
4 things again. The Board would not allow him to bring
5 his own interpreter: it had to be an interpreter from
6 the Board.

7 MR. ESTEY: Will the Board provide inter-
8 preters?

9 MR. GALLAGHER: Sometimes the man says
10 afterwards he was not interpreted properly.

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RL/SS 1 We think we should be able to bring an interpreter into
2 these hearings, too. I suppose there is a good reason
3 for it. Other fellows could do the same thing; they could
4 watch each other.

5 MR. ESTEY: To arrive before the
6 Appeal Tribunal, I take it you bring the workman with
7 you and you bring any other people you think might help
8 in the case.

9 MR. GALLAGHER: Yes.

10 MR. ESTEY: And they are sworn like
11 witnesses in court?

12 MR. GALLAGHER: Yes.

13 MR. ESTEY: And they tell the Tribunal
14 what they know. Who examines the workman in front of
15 the Board, if anyone?

16 MR. GALLAGHER: The Board. Any one of
17 the three can cross-examine or examine him, however they
18 want to deal with him.

19 MR. ESTEY: They don't have a secretary
20 who acts as a questioner?

21 MR. GALLAGHER: No. They record the
22 proceedings, and that is all, and they ask the man
23 questions. I have always felt we should have counsel
24 there to be able to, as I said before, protect our side
25 of the case.

26 MR. ESTEY: Do you also question your
27 own workman in front of the Tribunal? In other words, do
28 you put him up and say, "When were you hurt?" and so on,
29 or do you say, "You tell your story"?

30 MR. GALLAGHER: We do not. We just tell



1 the story and we ask the man occasionally if this is
2 correct, ask for his help, and if we are saying anything
3 that is not correct, please intervene.

4 MR. ESTEY: And the Board asks questions?

5 MR. GALLAGHER: Yes.

6 MR. ESTEY: In the case where you
7 brought the doctor in did the same procedure follow?

8 MR. GALLAGHER: I didn't bring the
9 doctor in myself. It was in court, at the inquiry. He
10 brought the doctor, Steffanini.

11 MR. KOSKIE: I was acting in that case
12 on behalf of the Labourers' Union and I recall we asked
13 the doctor to give evidence and I believe we asked him
14 questions initially, and then in turn the Board asked
15 questions of him.

16 MR. ESTEY: You get all the people in
17 front of the Tribunal who know something about this
18 event and the treatment. What happens then, in the
19 hearings you have been at?

20 MR. GALLAGHER: I have explained the
21 procedure that the Board can examine anyone they like.

22 MR. ESTEY: And after that what happens?

23 MR. GALLAGHER: When they finish the
24 examination they may ask for maybe fifteen minutes'
25 recess, and sometimes they tell us right there that they
26 are going to grant it, and so on.

27 MR. ESTEY: But you always get a report
28 and the reasons?

29 MR. GALLAGHER: Yes, they send it out in
30 writing and all the facts as to why they disallowed or



1 approved the claim.

2 MR. ESTEY: On that point, I take it
3 the first indication that the workman's representative
4 or the workman has of the facts upon which the Board has
5 reached its decision and the reasons behind that decision
6 are set out in the report the Board sends to the workman?

7 MR. GALLAGHER: After the Review
8 Committee has decided --- I am going to the letter to
9 Mr. Nesci from the Board saying that the Board has
10 reviewed this and has turned down his claim, and then
11 they set out in four paragraphs the history by paragraphs,
12 the facts as they understood to be so, and then they
13 proceed to their line of reasoning, and then they say
14 the findings of the Review Committee may be appealed
15 and you may get a summary of the evidence. On the next
16 page it says that the grounds of appeal must be stated
17 in writing and you must give particulars of your case.

18 MR. ESTEY: You say the first summary
19 you get is not the summary on request to go to the
20 Appeal Tribunal but to go to the Review Committee?

21 MR. GALLAGHER: That is right.

22 MR. ESTEY: And you have produced
23 Exhibit 3, and you say that in order to properly get
24 the situation before the Appeal Tribunal you should have
25 not the summary but the whole file.

26 MR. GALLAGHER: That is right.

27 MR. ESTEY: And that would include the
28 doctors' reports?

29 MR. GALLAGHER: Yes.

30 MR. ESTEY: So your submission is that



1 the doctors' reports should not, at least as against the
2 workman, be privileged?

3 MR. GALLAGHER: That is right.

4 MR. ESTEY: Can you tell us if you have
5 taken an appeal beyond the Appeal Tribunal? Are you
6 familiar with the appeal before the Board itself?

7 MR. GALLAGHER: I think we have a final
8 appeal to the Chairman.

9 MR. ESTEY: Of the full Board?

10 MR. GALLAGHER: Yes.

11 MR. ESTEY: Has your union had any
12 experience with that level of appeal and have you
13 anything to say on that?

14 MR. GALLAGHER: No. We have appeared
15 before the Board, but not on specific cases; it is in
16 matters of interpretation of the Act, and so on, and the
17 Chairman of the Board has always met with us when we
18 requested it. But we have never carried a claim to the
19 Chairman of the Board itself.

20 MR. ESTEY: I take it from that that
21 you have been successful in most cases in the Appeal
22 Tribunal?

23 MR. GALLAGHER: Yes, in spite of the
24 fact that we don't have lawyers. In the cases we have
25 lost, we are sure we would be much more adequate if we
26 had counsel to assist us.

27 MR. ESTEY: Let me ask you one thing in
28 that connection. Do you feel in your experience, Mr.
29 Gallagher, that justice would be better served if you
30 had the right or the Board representative had the right



1 or the employer's representative had the right to ask
2 witnesses questions? I have avoided using the word
3 "cross-examine". I want to know if you think everyone
4 present should be allowed to ask witnesses questions.

5 MR. GALLAGHER: Yes, I think a full
6 exploration of the thing should be there, and there is
7 no reason why a person should not be allowed to examine
8 a witness before the Tribunal.

9 MR. ESTEY: So I take it your local's
10 view is that these rights of appeal are valuable.

11 MR. GALLAGHER: Yes.

12 MR. ESTEY: And that they should not be
13 cut down in extent, but the right should be more
14 amplified to give you more right to summon witnesses
15 under subpoena?

16 MR. GALLAGHER: Yes.

17 MR. ESTEY: And to have counsel if you
18 so decide?

19 MR. GALLAGHER: Yes. We had one case in
20 Sarnia, we call it the Poison Gas Case, where twelve men
21 were involved, and it was so difficult for a person
22 like me to present the case; it is a terribly long and
23 complex thing. But it certainly should be examined,
24 because they needed a psychologist. The men's minds
25 were disturbed as a result of their exposure to gas,
26 and although they were physically able to work,
27 according to the doctors, several of them were accused
28 of malingering, and so on, and there was no way we could
29 say to the Board that if a man is exposed to a serious
30 accident, gas in this case, that his mind would become



1 affected by this, that he is still in that condition.

2 If the doctor says he is cut off, he is medically fit,
3 that's it.

4 MR. ESTEY: How far did that go on
5 appeal?

6 MR. GALLAGHER: Well, the Sarnia local
7 of our organization asked me to assist on it. We went
8 so far, and we had to even get Italian psychologists,
9 because an English psychologist or an Irish psychologist
10 cannot delve into the mind of the Italian in a case of
11 this kind. We had one awful time trying to find a
12 psychologist.

13 MR. ESTEY: How far did it go in the
14 appeal structure?

15 MR. GALLAGHER: It is still going on at
16 the moment. I think they are examining these people
17 mentally, and so on.

18 MR. KOSKIE: I can assist you, Mr.
19 Commissioner. That case is going before the full Board
20 of the Appeal Tribunal and hasn't yet been heard.

21 MR. ESTEY: In the preparation of that
22 case did you find that the summaries of evidence which
23 you had were sufficient to enable you to meet the case?

24 MR. KOSKIE: I may say this. I don't
25 think the claimants in those cases ---- and I have the
26 claim numbers here, by the way ---- I don't think they
27 have had counsel appear before the Appeal Tribunal.
28 We were, however, given transcripts of all the evidence
29 that was adduced before the Appeal Tribunal for purposes
30 of assisting us in the preparation of the case which is



1 coming up before the full Board. The summary of the
2 evidence before the Review Committee, I have the file
3 here, but I don't recall how extensive it was.

4 MR. ESTEY: On this question of appeals,
5 we have your union's views as to the advisability of
6 retaining this system. Do you have any comments as to
7 whether or not the appeal structure has incurred delays
8 of a serious nature, or do you think that delays are
9 necessary in order to do justice?

10 MR. GALLAGHER: In some cases we ask
11 for more time. Sometimes we feel it is too long,
12 especially where there is hardship as far as the
13 claimant is concerned. We feel they are overworked.
14 We feel they should take a look at the number of people
15 available for Tribunals and being trained and under-
16 standing what they have to do. In the case of the
17 poison gas case we asked for more time because it was so
18 complex, and we had to have the men examined by doctors
19 other than Compensation Board doctors.

20 MR. ESTEY: So you say, Mr. Gallagher,
21 on behalf of your union that if there are delays involved
22 they are either useful to the claimant or they are
23 necessary to do justice?

24 MR. GALLAGHER: I say some delays are
25 necessary. I think there are cases where a case is
26 delayed unnecessarily.

27 MR. ESTEY: I take it you don't put that
28 forward as a criticism of the appeal system as such, but
29 of the administration.

30 MR. GALLAGHER: I don't criticize the



1 appeal system. There is no use criticizing something unless
2 you can offer an alternative. But we feel that the
3 major problem we have is that we are not adequate to
4 present cases sometimes and we have to go back and have
5 counsel, or should have the right to have counsel.

6 As far as the lawyers' fees are
7 concerned, it has been suggested to me by members of the
8 Board, officials, that if we do allow lawyers to appear
9 for the claimants, whatever money they get for the men
10 they will take it in fees. We have considered this very
11 seriously. I am not suggesting that the legal
12 profession is a racket or anything like that, but I feel
13 there is a possibility that in some cases it happens
14 that the legitimate fees and the time the lawyer gives
15 to it is sometimes more than the amount of money that the
16 claimant gets. So for that reason we suggest that the
17 lawyers' fees should be paid by the Board. I think it
18 is an important point. After all, they have established
19 a precedent with doctors, they have paid the fees of
20 doctors, so why should they not pay the fees of lawyers?
21 I think that is important, without any racketeering on
22 the part of the legal profession. \$800 could reasonably
23 be less than the legitimate fees.

24 THE COMMISSIONER: Perhaps one advocate
25 there is a permanent appointment could bring out all the
26 relevant facts.

27 MR. GALLAGHER: That could be. The union
28 paid the fees on one occasion, I think, and it is not
29 the general practice in doing this. We only paid it in
30 one case. We are not making an issue of it, but I think



1 if the Board pays the doctors they should also pay any
2 other people that they need, such as lawyers.

3 MR. ESTEY: Mr. Koskie, I want to get
4 your views on this. Have you any comment to make as to
5 the necessity of the right of appeal inside the Board
6 or outside the Board?

7 MR. KOSKIE: I have discussed this
8 very briefly with my clients, and it is my understanding
9 that they are satisfied that there be no further rights
10 of appeal other than those that are presently provided
11 for by the Act. The reason being, of course, as the
12 Commissioner has indicated earlier today, the unions
13 on behalf of their members don't want to get themselves
14 back into the position they were many years ago. The
15 unions are trying to save as much money as they can for
16 their members and their locals, therefore, any further
17 appeals to the court would, of course, involve much
18 expense and, as Mr. Gallagher has pointed out, may of
19 necessity exceed the amount that the claimant would ever
20 hope to recover from the Compensation Board. So I think
21 as far as the Labourers' Union is concerned --- and my
22 comments I am stating now pertain only to their views
23 --- they are satisfied with the appeal system as such
24 and they don't wish any further appeals to the courts.

25 MR. GALLAGHER: I will put it this way,
26 Mr. Commissioner. We are very much opposed to the idea.
27 This is a vital case where the men would certainly have
28 to pay the piper, and 90% of the time they would lose.

29 MR. ESTEY: Lose more than they gain?

30 MR. GALLAGHER: Yes.



1 MR. KOSKIE: I would point out, for
2 whatever value it may have, that one of the reasons why
3 the Labourers' Union take this view is, of course,
4 because they are involved in the proceedings under
5 The Labour Relations Act, which brings them under the
6 Labour Relations Board. And the views there are, of
7 course, the same; the labourers don't want to have to
8 proceed into court in any matters, including workmen's
9 compensation matters.



1 MR. ESTEY: Mr. Commissioner, the Provincial
2 Building and Construction Trades' Council of Ontario
3 filed a brief which was read yesterday as regards Appeal
4 Procedures, and Mr. Kobryn spoke to me this morning
5 stating that the Association was unable to be here
6 yesterday to present this brief in the manner they can
7 present it and would like to come forward now.

8 MR. KOBRYN: Henry Kobryn, Secretary-
9 Treasurer of Provincial Building and Construction Trades/
10 of Ontario. We represent the majority of the building
11 and construction people in the Province of Ontario. I
12 am a bit nervous, so you will have to bear with me. In
13 fact, I feel like a business agent presenting his first
14 case before the Appeal Tribunal, because of its formality.
15 I don't think the same formality appears here, but I am
16 still nervous.

17 I shall read, starting on page 4 of my brief
18 in regard to the Appeal Procedure and the relationship
19 with the Board and the senior officers in which we will
20 deal with our objections to the present set-up of the
21 Appeal system.

22 We are concerned over the increasing number
23 of reports from our respective Business Representatives
24 of our affiliated locals that they cannot obtain satisfact-
25 ory information and advice relative to compensation
26 claims from our Labour Representative on the Workmen's
27 Compensation Board.

28 MR. ESTEY: I wonder if you could read this
29 introduction in completely on page 8 and then deal in
30 a summary way with the balance, as we read that in last



1 night.

2 MR. KOBRYN: Previously, representatives
3 could obtain information without seeing the file from
4 Board Members or Senior Staff in whom they had trust, so
5 they were in a position to properly advise the workman
6 what was required of him to show entitlement to benefits.
7 This system built a mutual trust in the past between the
8 workman, the employer and the Board.

9 Administrative procedures worked so well
10 that for the first time in the history of the Workmen's
11 Compensation in either the United States or Canada,
12 organized management and organized labour publicly went
13 on record as being opposed to any change in administra-
14 tive procedures...(This could be found in the Report of
15 Mr. Justice Roach of 1952.)

16 It is our contention that when Sir William
17 Meredith specifically set out in his report that one of
18 the Commission members must be from the ranks of the work-
19 ing people, he did not want to create a bureaucracy but
20 rather a more informal type of Commission where the in-
21 jured work people or their representatives could discuss
22 the problems involving the man's accident and subsequent
23 disability.

24 Mr. Justice Middleton, in his inquiry in
25 1930, did not find any reason to alter procedures which
26 had been in effect from 1915 to that date, where access
27 directly to the Board Members was a recognized procedure.
28 In 1937 the composition of the Board changed and it
29 became a predominantly medical Board -- two Commissioners
30 being members of the medical profession and the Chairman



1 a member of the employers through the Canadian Manu-
2 facturers Association. The public image of the Board
3 immediately declined and neither the work people nor
4 their representatives had access directly to the Board
5 and because of this had no knowledge as to whether the
6 workman had or had not entitlement under the provisions
7 of the Act. This left the representatives no other
8 recourse but to instruct their members to keep appealing
9 every rejected case and to take these matters into the
10 political arena. For the first time in the history of
11 this province the Board and its handling of cases were
12 debated from public platforms during provincial election
13 campaigns.

14 Ontario is the only Workmen's Compensation
15 Board in Canada where a workman, Members of Parliament
16 and Trade Union Representatives can not discuss a case
17 with a Board Member.

18 Prior to 1965 union and other representa-
19 tives, including Members of Parliament, and the injured
20 workman himself, had direct access to the Board. We
21 were never allowed to peruse Board files, but in claims
22 that failed on non-medical grounds the workman's story
23 was reviewed and in many instances elaborated on; not
24 that there was a change of story but merely because a
25 workman, for the first time, realized just what was
26 required of him. We used to be advised to have the
27 workman return to his home and set out the additional
28 points in writing and, if at all possible, to have this
29 corroborated by any of his fellow-workmen and if
30 necessary by the employer himself, and when this was



1 done to forward this additional information directly to
2 the Board's Claims Department. As representatives of
3 the man we told him unless he could obtain this required
4 information we could not ask the Board to process his
5 claim further.

6 If medical opinions were involved, we would
7 suggest to the man that he go back to his attending
8 doctor and discuss the matter with him and if the
9 attending doctor was still of the opinion that there was
10 either a direct causal relationship between the dis-
11 ability and the accident or there was a possibility of
12 a relationship, to have the doctor discuss this with
13 the Board's Medical Department and ask that the Board
14 make arrangements for a further independent medical
15 examination.

16 I am certain that representatives of work
17 people at that time, as do representatives today, did
18 not want an injured workman to obtain anything not
19 specifically provided for under the legislation.

20 The Board's business is sort of a mail order
21 business. I am sure that you, Mr. Commissioner, will
22 appreciate how difficult it is for people to write
23 down a proper description of actually what happened in
24 their employment to bring on the disability. Unless
25 there is some indication as to where the claim failed
26 then the workman has no other recourse but to keep
27 appealing and to harbour distrust of the Board, being
28 convinced that he has been most unfairly dealt with.

29 At this point it may be well to remind you
30 that in our opinion, it is impossible for any individual



1 or group to bring pressure on the Board to allow a
2 fraudulent claim. Before the Board can begin adjudica-
3 tion of a claim it must have the workman's signed state-
4 ment, setting out particulars of his accident and there
5 must be a separate signed statement from the employer
6 setting out basically the same set of facts. If the
7 employer's statement differs to any extent from that
8 sent to the Board by his workman, the Board usually
9 conducts an investigation or a review of some type to
10 determine the facts. Finally, the doctor must set out
11 in writing his medical opinion showing a direct causal
12 relationship between the disability and the accident
13 reported. It must be obvious to you, Mr. Commissioner,
14 that by talking to a Board Member or senior official you
15 could not possibly fix a claim. I am sure if you will
16 obtain the record of appeals from the Board it will show
17 that the number of appeals were diminishing while the
18 number of claims were increasing.

19 Under the former system there was a group
20 of highly trained claims personnel who participated in
21 many labour seminars and other educational classes
22 dealing with Workmen's Compensation. This was a
23 tremendous help to the Board in that it gave to a great
24 many people at the grass roots level a knowledge of
25 the Act and what was required. Personal contact with
26 a workman in his own environment built up trust and
27 confidence in the Board that justice would be rendered
28 in the adjudication of a claim.

29 Invariably at these meetings would be a
30 few whose own claims had been rejected. Following the



1 meeting the person from the Board would sit down with the
2 workman and get his side of the story and he would be
3 given the assurance that his file would be reviewed
4 by the Claims Officer in light of the additional informa-
5 tion and he would be advised directly as to the next
6 step that should be taken in the handling of his case.

7 At the present time there is one person
8 addressing labour meetings and enquiries are dealt with
9 by a special group who are known to a very few trade
10 union officials and are not known to the rank and file
11 membership. It is the consensus of our membership
12 that these staff members are merely routinely going
13 over the man's file and forwarding a letter justifying
14 the Board's earlier decision. There is no personal
15 contact whatsoever and the workman is of the opinion
16 that justice has not been rendered.

17 Under the circumstances we, as representa-
18 tives, have no other recourse but to advise all of our
19 membership to appeal every rejected claim right up to a
20 Board hearing.

21 This is our introductory.

22 THE COMMISSIONER: The change from 1930
23 when Mr. Justice Middleton made his report has been
24 very great. The change even from the time of Mr.
25 Justice Roach has been very great in the matter of the
26 volume of the work that the Workmen's Compensation Board
27 must consider and there are but a few Board Members.
28 I would think it would be obvious that the time had
29 long since passed when they could do the work they
30 were required to do and, at the same time, be accessible



1 as they had been when a smaller volume of work was in
2 process to members of the various unions or other people
3 who want to discuss claims.

4 And then, as has been pointed out, there
5 is another reason why a Board Member should not himself
6 become involved in discussing these things. They may
7 eventually have to sit on an appeal from a decision
8 by a lower echelon to the Board itself and they would
9 not be independent in their view under those circum-
10 stances.

11 MR. KOBRYN: This is the point we are
12 trying to make, My Lord. Previously, the labour
13 member on the Board, many unions had access to call him
14 or write him or present a particular case to him.
15 Immediately we would get an answer from him. He would
16 check the files, see what was stopping the claim, what
17 was necessary, what additional information was necessary
18 for the claim. Now, this labour member on the Board
19 is on the top echelon and he is on the final appeal, so,
20 in essence, we have no labour member on the Board anymore
21 because we have no one to go to to get any information
22 we need.

23 What we are trying to put across here is --

24 THE COMMISSIONER: They have set up, though,
25 in the Board itself, I understand, or sought to set up
26 a small department that devotes itself to nothing else
27 than trying to answer these questions that come in
28 about these various matters, matters of delay and
29 everything else and that that is their sole duty to get
30 that information out as rapidly as possibly. That, of



1 course, would be some of the matters that you formerly
2 took to the Board Member, I suppose?

3 MR. KOBRYN: That is right, but I think
4 the personal contact is missing. A point we also would
5 like to stress is that we would like the whole procedure
6 of the Board to be very informal. We want everything
7 in simple language that the workman can understand.
8 Because of the formality of the procedure now, we are
9 being pushed into a corner where we have to get legal
10 counsel and I feel that this should never be necessary.
11 The workman himself when he comes before the Appeal
12 Board, in fact, what I say is he should not have to come
13 before the Appeal Board, the information could be
14 gotten to him what is necessary for him to have to have
15 his claim processed properly without having to go to
16 Appeal, possibly at the Review side.

17 One of our major problems is that it is
18 in the construction industry. All workmen are spread
19 all over the province, they work in very small groups,
20 they are from seventeen or eighteen various unions, we
21 are not in the same position as possibly the industrial
22 group, where you have possibly a thousand workmen
23 or several hundred workmen in one particular plant which
24 is stationary and the unions send their people to the
25 seminars and they usually have people available for the
26 workman to fill out his papers for compensation claims
27 properly. Here, in the construction industry, we do
28 not have the same approach, or we cannot approach it on
29 the same basis because our workmen are spread all over
30 the place. So, consequently, many of the troubles that



1 occur and where the claims are rejected is because
2 probably the forms are not filled out properly.
3 Previously, when this happened, we could call up to the
4 Board and possibly get our labour member on the Board
5 and ask him would he look at the file and see what is
6 particularly wrong. He would come back and say that "The
7 workman's statement is not the same as the employer's
8 statement, there is a conflict here. Could you get
9 further information from him?" We could go back to the
10 workman and ask him to get the proper information, to
11 get the proper witnesses and send that information back
12 and with this informal approach we found that very few
13 cases got past the Review Committee. They were
14 handled in the initial stages. Now, it is such a
15 formality that we have no alternative but to tell our
16 people "If your claim is rejected (because there is a
17 simple letter sent out to a man saying "Your claim is
18 rejected," what are the bases?" They are not too clear
19 on what basis they are being rejected, so we have no
20 alternative but to tell the fellow "Okay, start the
21 appeal procedure", and as the appeal procedure keeps
22 getting greater I think the burden is going to keep
23 getting greater with the Board and now it is taking
24 possibly two or three months to get it to the Appeal
25 Tribunal stage and as the workload becomes greater we
26 are going to find that the cases are going to be delayed
27 much longer.

28 We feel, actually, we feel that only the
29 odd case should get to the Appeal Tribunal if there is
30 going to be an Appeal Tribunal and on the Appeal Tribunal



1 we feel that it should not be formal, it should be most
2 informal. In fact, we suggest that at the Appeal
3 Tribunal this is where a labour representative should be
4 possibly one of the three men sitting on the Tribunal.
5 As we have it now, we have a chief officer, we have a
6 member of the legal department and we have a member of
7 the medical profession. It is very formal, we referred
8 to the gas case in Sarnia. I attended the Appeal on
9 one of these gas cases as being an interested party
10 because we had assisted the Local Union to present the
11 case. It was so formal that two officers from the
12 Provincial Building Trades could not partake in it,
13 could not ask questions. If there were any questions to
14 be asked, they had to ask through our local Business
15 Agent who was there. We could not ask a pertinent
16 question. So we feel before the Appeal Tribunal where
17 the workman is considered an appellant, you have a court
18 reporter, a member of the legal profession sits there
19 and he tells you that this evidence is not admissible
20 under the procedures of the legal profession and our
21 people come before this Tribunal and they are confused.
22 We don't want to hire lawyers because I don't think
23 there is a necessity for it. The Act was made
24 specifically for the workman and the workman should be
25 the one who should be able to come in with his own
26 representative and present his case and feel that justice
27 has been done to him.

28 As far as taking cases beyond the Board is
29 concerned, we are completely opposed to that. We feel
30 that our people have got a fair shake from the Board



1 previously and I think if we went back to the previous
2 procedure with less formality and gave more opportunity
3 for our people to have access to certain information
4 to assist our people, I think our people would get
5 justice.

6 THE COMMISSIONER: I understand you to say
7 that under the present procedure you are advising them
8 to appeal all cases where the claim has been turned
9 down. Would you say that that was not the situation
10 before when the Board of Review turned down claims?

11 MR. KOBRYN: Well, when the Board of
12 Review turned down claims, usually we had already been
13 in on the act before it went to the Board of Review
14 because when the claims officer probably had already
15 referred to some --

16 THE COMMISSIONER: Well, let us take before
17 the Board of Review. The claims that were appealed to
18 the Board of Review, were they not automatically
19 appealed, all those that were turned down?

20 MR. KOBRYN: What would happen in a
21 particular instance --

22 THE COMMISSIONER: Maybe you can tell me.
23 I gathered that the workman usually would want to
24 appeal if he was turned down.

25 MR. KOBRYN: The workman would come to us
26 and say, "We have got this letter and they say our
27 claim has been turned down". We would immediately
28 either get on the phone or write a letter, there was
29 a time element there, he had time to appeal, and write
30 to our member of the Board to get specific information



1 that was necessary on why his claim was turned down.
2 I will be very honest about it, we had absolute con-
3 fidence in our member of the Board that we were going
4 to get the proper information and when we did get it
5 and we analyzed it the best we could then we could tell
6 the workman, "Your chances of appealing this thing are
7 nil" or "Your chances look pretty good if you have this
8 additional information that is necessary". So, many
9 of the times we would get the additional information,
10 the workman would get the additional information for us
11 and we would send it to the Board and then it would be
12 reviewed again in the light of the new information and,
13 consequently, it would either be rejected or accepted.
14 In most cases, the claim was made valid and unless there
15 were grounds, and serious grounds, then we advised the
16 workman to appeal. Now, we have not this type of in-
17 formation, we have not this type of association.

18 THE COMMISSIONER: In effect, isn't what you
19 were doing in many cases was filling the gaps and you
20 were acquainted with the fact and he was acquainted
21 with the fact that on the original information he had
22 given the claim was turned down, but him coming up with
23 a different story, his claim was allowed or might be
24 allowed?

25 MR. KOBRYN: It was not a different story.
26 Possibly some facts had been left out and we would go
27 often to the injured workman and say, "Who were the
28 witnesses? Make sure you know all your witnesses" and
29 we would go to the witnesses and find out actually what
30 happened to see that the thing was proper.



1 MR. ESTEY: Mr. Kobryn, I see by your
2 front page of your brief that you represent a group of
3 affiliated local unions and building trades councils.
4 Do you include in your membership Local 183, Mr.
5 Gallagher's Union?

6 MR. KOBRYN: Yes, we do.

7 MR. ESTEY: The reason I ask is that there
8 is a cleavage of opinion here which we would like to
9 hear about. One local thinks that there should be a
10 continuance of the present Appeal system, and you think
11 you should revert to what I might call the old system.
12 In summary, that is about it.

13 MR. KOBRYN: That is right.
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1 MR. ESTEY: Now, the other big
2 difference between the two of you is that one local
3 thinks that justice on occasion requires the engagement
4 of professional help, either in the trade union or a
5 lawyer, and in your opinion you cannot successfully
6 appeal and do justice without the unions engaging
7 lawyers.

8 MR. KOBRYN: If this system continues
9 and formality continues, we will be forced to get help.

10 MR. ESTEY: And that is because of
11 the introduction of formality, in enforcing these things
12 beyond the initial Review Committee?

13 MR. KOBRYN: That is right.

14 MR. ESTEY: Under the old system you
15 were, I take it, able to ascertain the nature of the
16 evidence upon which the Review Committee made its
17 decision.

18 MR. KOBRYN: You get additional
19 information if it is needed.

20 MR. ESTEY: You were able to find out
21 what the Review Committee had before it when it rejected
22 the claim.

23 MR. KOBRYN: That is right.

24 MR. ESTEY: And you found this out
25 not by reading the file, because you say you were not
26 given the file, but you found out by talking to one of
27 the members and he told you.

28 MR. KOBRYN: Yes.

29 MR. ESTEY: And now you find out by
30 a summary being provided to you by the Board. That is



1 | the difference, isn't it?

2 | MR. KOBRYN: Yes.

3 | MR. ESTEY: Whatever you feel, that
4 | is really the difference.

5 | MR. KOBRYN: That is right.

6 | MR. ESTEY: So you would sooner have
7 | the informal approach to find out what was in the file
8 | rather than a formal approach?

9 | MR. KOBRYN: I would like the summary
10 | to be in very simple language so that the workman can
11 | understand it.

12 | MR. ESTEY: That is really in the
13 | informal system.

14 | MR. KOBRYN: Yes.

15 | MR. ESTEY: That is really the nub of
16 | what you are saying.

17 | MR. KOBRYN: Yes.

18 | MR. ESTEY: After you got through the
19 | informal discovery of what was in the file, then you were
20 | able to go back and get any other information that was
21 | available and present it informally through the workman,
22 | through the Claims Department and then through an
23 | informal review.

24 | MR. KOBRYN: Yes.

25 | MR. ESTEY: But I take it you have to
26 | get that information and put it through the Appeal
27 | Tribunal.

28 | MR. KOBRYN: Yes.

29 | MR. ESTEY: You can still do it, but
30 | you say the difficulty is it is expensive and cumbersome,



1 and you have to put it through this informal body.

2 MR. KOBRYN: Yes. The time element is
3 a very important point.

4 MR. ESTEY: It is expensive, cumbersome,
5 takes time.

6 MR. KOBRYN: Yes.

7 MR. ESTEY: After the Appeal Tribunal
8 is finished with it you then have another right to go to
9 the Board. You say in your brief you are recommending
10 every appeal rejected be claimed right up to the Board
11 hearing. Do you have many cases where, in fact, you
12 take it to the Board hearing?

13 MR. KOBRYN: Right now the only case
14 that is going to the Board hearing, where again we had to
15 retain legal counsel, is the gas case.

16 MR. ESTEY: That is the famous gas
17 case?

18 MR. KOBRYN: Yes.

19 MR. ESTEY: Do you have many hearings
20 of claims through Board hearings?

21 MR. KOBRYN: The system hasn't gone
22 to a great extent in that yet.

23 MR. ESTEY: How many cases have you
24 had where you had to go to the Board?

25 MR. KOBRYN: One to my knowledge. This
26 was a provincial one, but I don't know what the locals
27 have done. This one is in the hands of a solicitor to
28 take it to the Board.

29 THE COMMISSIONER: Is that the case
30 you were referring to? Is this the case you are talking



1 about where you recommended you go to the Board?

2 MR. KOBRYN: That is right.

3 MR. ESTEY: In that Appeal Tribunal
4 you mentioned --- I am not just clear what you are
5 getting at --- something to the effect that all
6 questions had to be put through the one representative.
7 Who was that?

8 MR. KOBRYN: In this case it was
9 the business representative, and it was a plumber who
10 was involved. Our President was present at this appeal
11 because the Provincial Council undertook the responsibi-
12 lity of carrying these cases to the Board.

13 MR. ESTEY: And he was allowed to
14 ask witnesses questions, was he, at the Appeal Tribunal?

15 MR. KOBRYN: Yes.

16 MR. ESTEY: And was an employer
17 representative there?

18 MR. KOBRYN: Yes.

19 MR. ESTEY: And did he ask questions,
20 too?

21 MR. KOBRYN: Not so much ask questions,
22 but they submitted additional information.

23 MR. ESTEY: How would they do that?

24 MR. KOBRYN: If some facts were not
25 absolutely relevant or couldn't be explained by the union
26 representative or the workman, the employer present in
27 this particular instance supplied the additional
28 information from his files.

29 MR. ESTEY: He didn't call a foreman
30 or anything like that?



1 MR. KOBRYN: In one instance he had
2 a foreman there, and in another instance he had the time-
3 keeper there.

4 MR. ESTEY: In addition to the
5 business agent asking questions and the company
6 representative, the Board members also, I take it, spoke?

7 MR. KOBRYN: That is right.

8 MR. ESTEY: Was there what you might
9 call argument at the end of the discussion with witnesses,
10 any summary presented by each side?

11 MR. KOBRYN: Well, there was a bit
12 of a summary presented by our representative.

13 MR. ESTEY: But nothing by the
14 employer or anyone else?

15 MR. KOBRYN: No. The employer in
16 this particular case was most favourable to see that
17 these cases were dealt with properly and that the man
18 receive compensation. He tried to clear up any questions
19 about dates, and so on. I think there were letters went
20 out to various parties.

21 MR. ESTEY: Did you have any trouble
22 getting witnesses by subpoena or otherwise?

23 MR. KOBRYN: Not in this particular
24 case. We had two doctors there.

25 MR. ESTEY: Did the Board give its
26 decision right then and there?

27 MR. KOBRYN: No, it took a couple of
28 weeks.

29 MR. ESTEY: And in this case it was a
30 favourable decision, so you didn't have to appeal that



1 one.

2 MR. KOBRYN: That is right.

3 MR. ESTEY: But some of the others
4 involved are going to appeal?

5 MR. KOBRYN: There are five or six
6 going to appeal. We say on this point of the matter we
7 did not present all the cases. Other people were brought
8 into the thing to present them, and I can't say what
9 happened there.

10 THE COMMISSIONER: If you didn't
11 present them there might be a different result.

12 MR. KOBRYN: We were of the opinion
13 that if possibly the President was sitting on a
14 particular case it would be favourable to others.

15 MR. ESTEY: In reading your brief,
16 you complain, if that is the right word, that is to say,
17 you point out that your problem is there is no personal
18 contact whatsoever and the workman is of the opinion
19 that justice has not been rendered, and that is at the
20 top of page 8. There you are talking about the Review
21 Committee, and I take it you are not saying that the
22 Review Committee should see these people, but that in
23 the first contact with the workmen's representatives
24 haven't got the contact they used to.

25 MR. KOBRYN: That is right.

26 MR. ESTEY: But in that case the
27 workman himself didn't go down to see these people.

28 MR. KOBRYN: No, his representative.

29 MR. ESTEY: Whereas you would be able
30 to contact a local union business agent to go into the



1 Board premises for you.

2 MR. KOBRYN: Or deal by mail or
3 otherwise.

4 MR. ESTEY: Are you really proposing
5 that there should be a union representative on the Review
6 Committee?

7 MR. KOBRYN: We say that possibly
8 there should be a union representative on the Review
9 Committee, a labour representative on the Appeal Tribunal.
10 I think there should be a labour representative at each
11 stage, because as the situation stands we only have one
12 labour representative on it and because he is at the top
13 he cannot talk to us, he cannot give us any information
14 or assist us at all because he may have to sit on the
15 final appeal.

16 THE COMMISSIONER: The point raised
17 in one or two of the submissions by industry is that
18 even at the Board level, if there is to be a labour
19 representative there should be a representative of
20 industry. It should be one way or the other: Either
21 the members of the Board are wholly independent and act
22 as judges entirely independent of their origin, otherwise
23 there is no particular point in requiring an appointment
24 from one particular section or the other. If they are
25 to represent sectional interests at that level, there
26 should be a representative of industry as well as a
27 representative of labour. I am looking at it as one of
28 the points we have to consider in this inquiry because
29 it has been brought up in those terms, and I take it
30 from what you say now that you think there should be labour



1 a judge, so to speak, on each of these levels.

2 MR. KOBRYN: We would be remiss if
3 we didn't blow our own horn. I have to agree with you
4 that the other side would want someone there too, but
5 we say that if we were represented or we had people there
6 it would build up more confidence in the Board that
7 we had previously where we could contact our labour
8 member on the Board.

9 THE COMMISSIONER: In all the
10 representations made on this point we haven't been given
11 many examples of where it is felt the claimant hasn't
12 been justly dealt with. Obviously the majority of these
13 claims are allowed, if not allowed at the lower level,
14 on appeal. Apparently the amount of appeals that succeed
15 are substantial and I don't think even the representations
16 we have heard have said that the decisions have been
17 unfair. It does seem to me that we haven't heard any
18 submissions of that character in the last two days. On
19 the contrary, some suggest that the Board does a pretty
20 good job in most cases.

21 MR. KOBRYN: Well, our major
22 objection is the new procedure and the formality of it.
23 It is having access to it, where we could get the
24 necessary information. Much of the work was done to
25 adjudicate claims before they had to reach an appeal
26 stage. We feel that this is where this Commission should
27 take a very serious look to see that there is an avenue
28 of getting information that would start appeals,
29 necessary information that was sent by the Board to the
30 workman so that he could really know where he stood



1 completely.

2 MR. ESTEY: Right at the outset?

3 MR. KOBRYN: That is right.

4 MR. ESTEY: On that point, at page
5 6 of your brief you say that under the old system, if
6 there was a difference of opinion in the medical aspect
7 of the case, or if there was some doubt about the causal
8 relationship between the disability and the accident,
9 the workman's doctor could speak to the medical man on
10 the Board and they could appoint an independent medical
11 examiner.

12 MR. KOBRYN: I am not too sure on that
13 point now. There are a number of people in the Claims
14 Department. You could call up the Claims Department about
15 a particular claim on file, and if you were to call back
16 again you would get a different person, so consequently
17 possibly you get a different opinion; and if you call
18 back five or six times you get five or six different
19 interpretations, which confuses the representative of
20 the workman, whoever makes the call, to know where he
21 stands and what he has to have to prove his claim or to
22 assist the Department to validate his claim.

23 MR. ESTEY: That is what happens now?

24 MR. KOBRYN: Yes.

25 MR. ESTEY: Whereas in the former
26 days it would come down through the union contact in the
27 Board?

28 MR. KOBRYN: Yes.

29 MR. ESTEY: That is the situation.

30 MR. KOBRYN: That is right.



1 MR. ESTEY: Thank you very much.

2 THE COMMISSIONER: It is five minutes
3 to one. Is that point concluded except for The Workmen's
4 Compensation Board?

5 MR. ESTEY: Yes, Mr. Commissioner.

6 THE COMMISSIONER: It is five minutes
7 to one, so we will adjourn until two o'clock.

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10 ---Luncheon adjournment.

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1 ---At 2:00 P.M. the Hearing recommenced.

2
3 MR. ESTEY: Mr. Commissioner, yesterday we
4 read into the record the brief of the Ontario Provincial
5 Conference of Bricklayers', Masons' and Plasterers'
6 International Union. Today at noon, the representatives
7 of that Union spoke to me and asked if we might allow
8 them to amplify their remarks on the Appeal question
9 before we leave it. I told them that no good purpose
10 would be served in reading the thing into the record
11 but if they wanted something added I am sure the
12 Commissioner would like to hear from them. They are
13 here now, and Mr. Williams will speak on their behalf.

14 MR. WILLIAMS: I am Don Williams, representing
15 the Ontario Provincial Conference.

16 THE COMMISSIONER: You were not here
17 yesterday, Mr. Williams?

18 MR. WILLIAMS: No, unfortunately, Mr.
19 Commissioner, due to the pressure of business I had to
20 leave prior to the submission being read into the record.

21 THE COMMISSIONER: You represent who?

22 MR. WILLIAMS: The Ontario Provincial Con-
23 ference of Bricklayers', Masons' and Plasters' Inter-
24 national Union.

25 THE COMMISSIONER: This has been read in
26 already and all present have heard your submissions.

27 MR. WILLIAMS: I have been given to under-
28 stand, Mr. Commissioner, that the brief was read into
29 the record yesterday and, certainly, I want to thank
30 you for giving me the opportunity of just expressing a



1 few remarks today as an addendum to the submission
2 itself.

3 Mr. Commissioner, one feature which annoys
4 me is the fact that unnecessary and long delays are
5 often witnessed in claims where some doubt has been
6 created on the validity of the claim and eventually
7 reaches the stage of the Board of Appeal. These un-
8 necessary and lengthy delays must be troublesome and,
9 undoubtedly, costly to the Board and, on the other
10 hand, can be burdensome and cause financial embarrass-
11 ment to the workman.

12 It is our opinion that anything and every-
13 thing should be done to prevent these costly and burden-
14 some delays, if possible. The Claims Officer, after
15 reviewing the facts at his disposal in the case of an
16 injured workman, arrives at a decision that the injury
17 does not fall within the meaning of the Act arising out
18 of and during the course of employment and the injured
19 workman and his representatives should have the right
20 and the opportunity of discussing the facts with the
21 possibility of clarifying and removing any doubt that
22 causes the Claims Officer to render an adverse decision
23 and through this medium would prevent any further delays
24 of the case being referred to the Review Committee.

25 If, however, the Claims Officer is still
26 not convinced and refers the case to the Review
27 Committee --

28 THE COMMISSIONER: Well, the workman in most
29 cases has been interviewed by someone on that level, has
30 he not?



1 MR. WILLIAMS: Not in all cases, Mr.
2 Commissioner. At one time, as the previous speaker
3 stated, this was the case, but, unfortunately, due to
4 the Board's new procedure, we found that this was not
5 taken too kindly.

6 THE COMMISSIONER: I am not talking about
7 the Appeal Board, the Review Board, I am talking about
8 the claim before it goes to the Review Board. He has
9 been seen and interviewed by someone, I take it.

10 MR. WILLIAMS: Not in all instances and I
11 would say not in most cases, Mr. Commissioner.

12 THE COMMISSIONER: Not in most cases?

13 MR. WILLIAMS: No. If, however, the Claims
14 Officer is still not convinced and refers the case to
15 the Review Committee for adjudication, then we submit
16 that the same procedure should follow, meaning that the
17 claimant or his representative should have the right
18 and opportunity of appearing before the Review
19 Committee in an attempt to establish the validity of
20 the claim. This right and opportunity is not available
21 to the injured workman or his representative under the
22 present Board procedure and I submit for your considera-
23 tion, Mr. Commissioner, that if this opportunity was
24 afforded to the claimant or his representative, it
25 might very well eliminate the case from being referred
26 to the Appeals Tribunal, therefore saving the Board
27 from additional cost, and the injured workman from any
28 other delayed compensable benefits.

29 My arguments in this case, Mr. Commissioner,
30 is supported to at least a degree in a case that was



1 cited in our typed submission, the case of Anthony
2 Merlino, Claim No. 5986894. This is a case where the
3 injured workman under the instructions of his physician,
4 was instructed to cease work on the 2nd of April, 1965.
5 The case went before the Review Committee sometime in
6 the latter part of September or the early part of
7 October, and it was at that point that I was requested
8 to intercede on Mr. Merlino's behalf and I feel, at
9 least to a degree, satisfied, Mr. Commissioner, that
10 had we been afforded the opportunity of appearing before
11 the Review Committee and presenting some of the evidence
12 rather than have to give it in written form, I feel
13 reasonably sure that the Committee would have rendered
14 a different decision than what they did. Unfortunately,
15 the Committee did render --

16 THE COMMISSIONER: I suppose the reason
17 that it is dealt with in that fashion at that level is
18 to get as expeditious a decision as possible. Did this
19 involve delay in any amount in your submission?

20 MR. WILLIAMS: It involved delay in the
21 sense, Mr. Commissioner, that the Committee rendered an
22 adverse decision, with the result, of course, that it
23 had to be referred to the Appeals Tribunal, which
24 caused a further delay.

25 THE COMMISSIONER: I am referring now -
26 what effect would it have if the present set-up were,
27 on complaint being made, the Board of Review goes into
28 action right away and gives a decision right away?
29 Would this necessitate calling evidence, further inter-
30 view of the claimant, and would this delay matters



1 unduly?

2 MR. WILLIAMS: What we are particularly
3 interested in, Mr. Commissioner, is to establish a case
4 of validity as soon as possible, and I have reason to
5 believe that had the Review Committee been given the
6 opportunity of having personal representation appear
7 before them, I do feel satisfied that their decision
8 would have been much different than the one that they
9 had rendered. I feel satisfied, Mr. Commissioner, that
10 their decision would have been identical to that of
11 the Appeals Tribunal.

12 I think that we can agree at least to some
13 measure of understanding that it is sometimes much more
14 beneficial to a Board if they can have a person inter-
15 viewed along with evidence than it is to try to explain
16 the situation in writing. The feature that I just
17 mention to you is aggravating within itself, but an
18 even further aggravation is when an injured workman or
19 his representative cannot secure from the Board a complete
20 record of all facts upon which the Review Committee
21 rendered its decision. We submit to you, sir, that it
22 is most difficult to prepare and submit an appeal to
23 the Appeals Tribunal when one is not in receipt of all
24 of the facts of record,

25 A summary of the facts is of very little or
26 no value to some of us who may be less fortunate than
27 others insofar as education and procedure is concerned.
28 I think that we must not lose sight --

29 THE COMMISSIONER: Would you be any better
30 off if you got the complete medical report, Mr. Williams?



1 You would still be suffering from the same handicap
2 would you not?

3 MR. WILLIAMS: This is true, but at least
4 you would be given the opportunity of basing the appeal
5 on the actual facts of record. As the summary presents
6 itself, you have no knowledge of what the medical
7 records have to present. As I just indicated, Mr.
8 Commissioner, it serves very little or no purpose, a
9 summary of evidence compared to the full facts.

10 THE COMMISSIONER: On the one or two examples
11 that have been shown to us and quoted at length, it
12 would appear that there was a fairly wide summary of
13 medical evidence and the complaint about it has been
14 that the Union representative was not qualified to maybe
15 assess that evidence and bring out all the things that
16 were necessary on appeal. But would he be any better
17 off if he got the whole of the medical evidence which
18 might be even more obscure if he read it from the man's
19 file?

20 MR. WILLIAMS: This is true. In the case of
21 many people, if he were provided with medical records
22 there are terms used in the medical records, I have to
23 agree that would be most difficult for a layman to under-
24 stand and, of course, he would have to seek other help
25 in order to prepare a proper appeal, but I do feel
26 satisfied that if he did have all of the records, all
27 of the facts of record, then you would be in a much
28 better position to present an appeal on behalf of an
29 injured worker than what you would be in receiving only
30 a summary of the evidence.



1 We must never lose sight of the fact that a
2 worker when injured is serious enough within itself, but
3 his and his family's future could very well depend on
4 the decision of the Appeal Tribunal and this indicates
5 it is then only fair to suggest that the claimant must
6 be provided with all of the facts on record in order
7 that an injured workman may present a just case for
8 adjudication. I don't think it is fair to the Review
9 Committee, I don't think it is fair, Mr. Commissioner,
10 to an Appeals Tribunal to be in a handicapped position
11 of rendering a decision if they are not provided with
12 all of the facts from the claimant's point of view as
13 far as an appeal is concerned.

14 I think that if the claimant or the
15 appellant is provided with all of the facts and the
16 decision goes against him at that point, then certainly
17 he must agree that he has been given the opportunity
18 and the facts in order to base a proper and a just appeal
19 even though the decision of the Appeals Tribunal may
20 be an adverse one to him.

21 That is, briefly, all I had, Mr. Commissioner.

22 THE COMMISSIONER: Thank you, Mr. Williams.

23 MR. WILLIAMS: Thank you very kindly.

24 MR. ESTEY: Mr. Poole of the Workmen's
25 Compensation Board.

26 MR. POOLE: Mr. Commissioner, as requested,
27 the Board has prepared comments to be made in connection
28 with the Appeal Procedure. The system which was in force
29 prior to March 1st, 1965, was that claim
30 rejection letters coming from the Claims Department



1 gave minimal information concerning the reason for
2 rejection or the facts on which an adverse decision
3 was based. The workman, because he was not fully
4 informed of these facts, frequently requested further
5 information.

6 On appeal, unless additional facts were
7 provided he was sent a more detailed explanation by the
8 Claims Department. Only if further appeals were
9 received would the matter be referred as an appeal to
10 the Review Board.

11 The Review Board

12 The Review Board was organized in 1939 to
13 deal with an increasing volume of appeals and was com-
14 posed of a senior claims officer and medical and legal
15 experts.

16 Review Board Procedure

17 The Review Board re-examined existing
18 evidence and an evidence submitted. Further enquiry
19 or medical examination was carried out if necessary and
20 this system is presently continued by our Review
21 Committee.

22 The Review Board occasionally referred
23 claims to a Medical Referee to resolve conflicts of
24 medical opinion. While the Review Board could hold
25 hearings, in some cases it was directed to do so by the
26 Board. Out of 1,123 cases considered by the Review
27 Board in 1964, hearings were held in only 75 cases.

28 THE COMMISSIONER: Now, just hold it for a
29 moment. While the Review Board could hold hearings --
30 Oh, it is the Review Board, I see, that we are talking



1 about. All right.

2 MR. POOLE: The parties concerned were
3 advised of Review Board decisions without detailed
4 reasons. Appeals of Review Board decisions were
5 referred to the Board.

6 THE COMMISSIONER: While you are dealing
7 with the Review Board, was it customary for the claimant
8 or the adviser to appear before the Review Board?

9 MR. POOLE: They did in 75 cases, sir.

10 THE COMMISSIONER: That is the hearings?

11 MR. POOLE: That is the hearings, sir.

12 THE COMMISSIONER: Otherwise, they wouldn't
13 be in contact with the Board. They might have been in
14 contact with the Claims Officer?

15 MR. POOLE: Yes.

16 THE COMMISSIONER: They might have been in
17 contact with the Claims Officer?

18 MR. POOLE: Oh, yes.

19 THE COMMISSIONER: I see.

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1 New System - which went into effect on March 1st, 1965.

2 At this time the Board realized
3 that the volume of appeals coming to them, that is the
4 Board, had reached unmanageable proportions and the
5 forecast of economic growth indicated still greater
6 volume and it was apparent that a new appeal system was
7 necessary.

8 To enable the Board to perform its
9 dual function of corporate presidency of a very large
10 business organization and the last body of appeal, the
11 new system of handling appeals had to reduce the appeal
12 load to the Board.

13 The new system has three appeal
14 levels each making its own expert decisions independently
15 on the basis of the evidence available. These levels are
16 the Review Committee, Appeal Tribunal and the Board.

17 Initial Decisions

18
19 Initial decisions are the exclusive
20 responsibility of the Claims Officers handling the claim
21 in the Claims Department. With guidance and advice from
22 senior, well-qualified Claims Officers, the facts are
23 gathered and evaluated. The Claims Officer may write,
24 phone, teletype or have an investigator obtain additional
25 information. There are Medical Officers in each of the
26 ten claims sections for consultation on medical aspects
27 of claims decision-making and consultants are used where
28 necessary both within the Board and in private practice.

29 Every adverse decision made by a
30 Claims Officer is discussed with his Section Supervisor.



1 Workman Advised on Appeal Procedure

2
3 In all cases of adverse decision the
4 workman is advised in writing of the facts on which the
5 decision is based and the procedure he should follow if
6 he wishes to appeal. This enables the workman to know
7 why the Board has not been able to grant his case.

8 First Appeal - Review Committee

9
10 For many years it has been a principle
11 in the Board's operation that no person, party to the prior
12 decision, could, on appeal, confirm that decision.

13 All appeal of decisions are referred
14 directly to the Review Committee. This group is composed
15 of senior staff with Claims, Assessment and Medical
16 experts and includes some members of the previous Review
17 Board.

18 THE COMMISSIONER: What is the size
19 of that committee?

20 MR. POOLE: Nine members, sir.

21 THE COMMISSIONER: Nine members?

22 MR. POOLE: Yes.

23 They have no departmental
24 responsibilities and their sole duty is to review
25 independently and decide on these more difficult cases.

26 New Evidence

27 The production of new evidence is
28 not a primary consideration since generally all available
29 information will have been obtained by the operating
30 department. More frequently the workman's appeal presents



1 a fresh viewpoint or explanation of the information
2 already on file. However, any new evidence introduced
3 will be given full consideration. Further enquiries
4 may be ordered to clarify the information or to obtain
5 additional information which the claimant in his appeal
6 indicates exists. This is in correspondence, through
7 investigation by the Claims Department. The Committee
8 can request the opinion of senior medical consultants
9 and may arrange further medical examination and reports
10 by specialists if warranted.

11 Decisions compatible with Evidence

12
13 Decisions are made in accordance with
14 the evidence. If the decision is adverse, the workman
15 is advised in writing of the reasons for the decision
16 and of his right to appeal to the Appeal Tribunal. Cases
17 coming to the Review Committee are usually dealt with
18 in approximately one week or less.

19 Summaries of Information which were Introduced Approximately
20 One Year Ago ---

21 THE COMMISSIONER: Mr. Poole, cases
22 coming to the Review Committee are usually dealt with
23 in one week. Have you any opinion as to how long the
24 average case is before it gets to the point where action
25 by the Review Committee is asked?

26 MR. POOLE: Well, of course, it is
27 very, very difficult to set an average. It depends on
28 the amount of work that has to be done at the level of
29 the Claims Department to enable the necessary information
30 to be obtained to adjudicate on their information. The



1 next step, of course, is how long it takes for an appeal
2 to arrive, and there have been many cases where an appeal
3 has not arrived for two months after the first decision
4 has been made, so to get statistical information is
5 almost impossible.

6 Appeals of Review Committee decisions
7 are heard by the Appeal Tribunal. To assist the workman
8 in the preparation of his appeal and to ensure that he
9 is aware of the extent and the quality of the information
10 on which the previous decision was based, the workman
11 is advised that a summary of this information is
12 available to him on request. The summary can generally
13 be provided without delay and is sent well in advance
14 of the hearing to provide him adequate time to prepare
15 his appeal properly.

16 The workman may also obtain
17 assistance in preparing his appeal from the Workmen's
18 Adviser. The Workmen's Adviser will assist either by
19 correspondence or interview and has access to the
20 Board's files and medical officers for information,
21 advice, examinations and opinions.

22 THE COMMISSIONER: This is the first
23 we have heard of the Workmen's Adviser. That is a union
24 adviser?

25 MR. POOLE: No, this is a member of
26 our staff, sir.

27 THE COMMISSIONER: You are referring
28 to a member of the W.C.B. staff?

29 MR. POOLE: That is right.
30



1 Terminology in Summaries

2
3 The summaries of information are
4 extracts from the actual reports on file and quote
5 the original wording of the person who wrote them, so
6 that there is no question that the Board may have
7 misinterpreted their meaning to the workman. To prevent
8 a breach of confidence in no instance is the author
9 of a report identified.

10 Where the medical reports quote
11 medical terms the workman should consult his attending
12 doctor or representative to obtain a detailed
13 understanding as to their meaning.

14 Second Appeal - Appeal Tribunal

15 The Appeal Tribunal consists of
16 three members, a Senior Claims Officer as chairman,
17 a Lawyer and a Doctor. Their sole function is to hold
18 informal hearings in appeals from the Review Committee
19 decisions. Hearings are held either in Toronto or the
20 various County Towns of the Province, depending on the
21 balance of convenience to the workman. Nearly all
22 cases at this level are adjudicated within four weeks.
23 Appeals concern many aspects of claims from the right to
24 entitlement to the period of disablement and the degree
25 of permanent disability.

26
27 Interpreters Available

28 Interpreters are provided in the
29 workman's language whenever needed as a proper charge
30 on the Accident Fund. All proceedings are recorded by a



1 licensed reporter.

2 Hearings

3
4 Hearings are informal but are
5 conducted on an organized, orderly basis. They enable
6 the workman to meet with the senior officers of the
7 Board and to present such argument or evidence as he
8 feels will support his claim. Questions are asked but
9 cross-examination as such is not permitted and the
10 employer and workman are not dealt with on an adversary
11 basis. The Tribunal may question those appearing to
12 ensure that all information is brought out and under-
13 stood. Before the Tribunal and the Workmen's
14 Compensation Board, evidence has always been given under
15 oath.

16 Representation

17
18 When the workman is advised of the
19 time and place of the hearing, he is also advised that
20 he may be represented and may bring witnesses.

21 The workman need not be represented at all but may be
22 represented by a Member of Parliament, Union Representa-
23 tive, Solicitor, Clergyman, relative or friend. Legal
24 counsel is certainly not essential in appearing before
25 the Tribunal and lawyers appear much less frequently
26 than union representatives. Where a man conducts his
27 own appeal, he is given every assistance by members of
28 the Tribunal.

29 Witnesses

30 To facilitate a workman in



1 establishing his case without financial hardship, for
2 the past year professional fees of \$25.00 per half day
3 plus reasonable out-of-pocket expenses and mileage charges
4 are paid to doctors who give evidence at hearings.

5 The Board also has a statutory authority to compel the
6 attendance of witnesses but this is seldom exercised
7 because the Board is greatly dependent on the co-operation
8 and good will of the medical profession throughout the
9 Province.

10 If, however, the Board could not
11 arrive at the true merits and justice of the case
12 without the attendance of an important witness, it would
13 issue a subpoena.

14 In cases of successful appeals, lay
15 witnesses are also paid witness fees at \$10.00 per half
16 day plus reasonable out-of-pocket expenses and mileage
17 charges.

18 Correspondence in French or English

19
20 All correspondence including appeal
21 decisions for the past year have been given in either
22 of the official languages of Canada, French or English.
23 In other cases, while the Board provides competent
24 interpreters for interviews and hearings, it is quite
25 impossible to conduct correspondence in all languages
26 spoken in our multi-racial society.

27 Appeals to the Board

28
29 Decisions of the Appeal Tribunal may
30 be appealed to the Board. The Workmen's Compensation



1 Board itself holds hearings and the Appeal Tribunal
2 follows the Board's procedures. All appeals to the Board
3 are held at the Board's Head Office in Toronto.
4 Interpreters are provided whenever needed and all
5 proceedings are recorded by licensed reporters. Hearings
6 are informal but are conducted on an orderly, organized
7 basis. Questions are asked but cross-examination is
8 not permitted and the employer and workman are not dealt
9 with on an adversary basis. The Board may question those
10 appearing to ensure that all the information is brought
11 out and understood. Hearings such as these enable
12 the workman to meet with the members of the Board to
13 present such argument or evidence as he feels will
14 support his contentions. The Board considers all the
15 evidence given in addition to all the evidence previously
16 provided including that given before the Appeal Tribunal.
17 The Board's decision is rendered upon the real merits
18 and justice of the case.

19 1964 Statistics (Old System)

20
21 Statistics are difficult in dealing
22 with a workman's case. In every instance all levels of
23 the Board deal with claims as individual claims and not
24 as statistics. In 1964 out of 318,331 claims reported,
25 12,172 were rejected by the Claims Department. The
26 Review Board considered 1,123 appeals but only held
27 75 hearings. The decision of the Claims Department was
28 changed in 238 cases. The Board itself dealt with 918
29 claims.
30

New Systems Statistics - 1965

In 1965 of 359,353 claims reported, 15,289 were rejected by the Claims Department. From March 1 to December 31, 1965 of 2,350 appeals to the Review Committee the original decision was altered in 473 cases. In the same ten-month period the Appeal Tribunal heard 215 appeals from the Review Committee decisions and altered the decision in whole or in part in 113 cases. In some instances the alteration was merely an extension of the entitlement previously granted by the Review Committee.

152 of the hearings were held in Toronto and 63 in other County Towns. At 73 hearings workmen were represented by Union Representatives, at 65 hearings by Legal Counsel, and at 28 by Members of Parliament, either M.P.P.'s or M.P.'s. In 21 cases some other responsible representative was present to assist the workman and in 28 cases the workman conducted his own appeal.

In 1965 the Board heard 19 appeals from decisions of the Appeal Tribunal.

The Application of Board Policy to Decision-Making

Decisions are based on the requirements of the Act. Each level of authority makes independent decisions in accordance with the evidence and within the framework of existing Board policy.

The Board has monthly meetings with the Review Committee and Appeal Tribunal leaders at which exceptions to and problems of procedure and policy are



1 reported. Board policy is reviewed as required.

2 Section 23 of the Act confers on the
3 Board itself, the right to appoint Medical Referees.

4 The Board employs a highly qualified staff of Medical
5 Officers and consultants and in addition refers patients
6 to specialists for treatment and opinion.

7 With the new appeal system the
8 number of appeals to the Board have lessened and the
9 Board decides the case on the balance of probabilities
10 based on the expert evidence. In difficult cases, the
11 Board must occasionally refer a medical problem to a
12 Medical Referee within the requirements of Section 23.

13 All decisions in the Board are on the
14 true merits and justice of the case. It has always been
15 the Board's position that this entails resolving
16 reasonable doubt in favour of the workman.

17 Appeals on Other Matters

18
19 The appeal system is not restricted
20 to claims adjudication. Appeals from decisions made in
21 any of the Board's operating departments concerning
22 matters such as medical treatment, vocational rehabili-
23 tation, employer classifications and assessments, are
24 also dealt with in the appeal system.



APPEALS

	1965	1966
	<u>March 1 - December 31</u>	<u>January 1 - Sept. 30</u>
<u>Review Committee</u>	2,350	2,295
<u>Appeal Tribunal</u> (hearings)	209	445
	<u>August - December 31</u>	
<u>Board</u> Section 16	8	20
Appeals	<u>11</u>	<u>57</u>
Total Board Hearings	<u>19</u>	<u>77</u>

ACCESS TO BOARD FILES AND MEDICAL REPORTS

Board's Records Privileged

Reports and information are obtained from many sources, workmen, employers, doctors and others, to assist the Board in the accurate assessment of the workman's entitlement under the Act. Some reports contain information of a highly confidential nature which may relate to present or past disabilities, other medical conditions, employment conditions, negligence and candid opinions concerning the people or circumstances involved. These reports are made on a frank, confidential basis with the prohibition that they will not be divulged except in the course of duty as provided by Section 97 of the Workmen's Compensation Act.

The Board's relationships are based on confidence, mutual trust and mutual interest in the humanitarian administration of justice.

Copies of Reports for Doctors

Copies of specialists' reports are



1 sent to all doctors who have attended the workman to
2 bring their knowledge and records up-to-date. Patients
3 at the Board's Hospital and Rehabilitation Centre are
4 under continuous medical supervision and copies of all
5 medical reports made by the Board's doctors are supplied
6 to the attending doctors.

7
8 Medical Reports Not Given to Others

9 Copies of medical reports are not
10 given to other parties since this would be a breach of
11 confidence to the physician.

12 Workmen are not given copies of
13 medical reports concerning themselves since this would
14 not be in their best interests according to accepted
15 medical doctrine. The workman has a personal relationship
16 with his attending doctor who has copies of all the
17 reports and it is considered that the attending doctor
18 is the person best qualified to determine what medical
19 information the workman should have.

20 Reports to Employers

21
22 Many employers demonstrate their
23 interest in their employee's progress by frequent
24 personal contact. Where this is not possible the Board
25 is pleased to answer their enquiries. Medical reports
26 are not made available to employers since they may
27 contain information which has been obtained from the
28 doctor in confidence.

29 Where a company doctor is also the
30 attending doctor, naturally he receives copies of all



1 medical reports to assist him in attending the workman.
2 A company doctor not attending the workman may not obtain
3 copies of reports because of their confidential nature.

4 An employer who is concerned about
5 the physical condition of one of his workmen may have
6 him examined by the employer's doctor and where the
7 examination concerns a compensable condition Section 22
8 (1) of the Act provides for such examination.

9 Appeal Cases

10
11 Prior to 1965 a workman whose claim
12 was rejected received a letter briefly stating the
13 decision. This was a frequent cause for enquiry since
14 the workman had no knowledge of the evidence against
15 allowance and, therefore, could not reasonably overcome
16 it on appeal. When the appeal system was revised in
17 1965 a new approach was taken to provide the man with
18 detailed information. He is given the reasons for the
19 rejection, and at the same time advised of his right to
20 appeal.

21 Summaries of Evidence

22
23 When an appeal reaches the Appeal
24 Tribunal for a hearing, an impartial summary of the
25 information on which the previous decision was based is
26 made available to the workman. As an interested party to

27 Board decisions the employer is also entitled to the
28 same consideration and may obtain the summary of
29 information on request.

30 The summary provides the essence of



1 all pertinent medical and other information but does not
2 include extraneous or irrelevant material, nor does it
3 reveal the identity of the doctors making reports, thus
4 the confidential relationship between the doctor and
5 the Board is maintained while at the same time the work-
6 man is made aware of the nature of the evidence he must
7 overcome to have the decision reversed.

8 In providing summaries care is
9 taken to give actual evidence rather than an interpre-
10 tation of evidence. In the case of medical reports the
11 relevant sections are quoted so that the Claimant may
12 know exactly what has been reported rather than have the
13 evidence interpreted for him. The workman may consult
14 his own doctor for medical advice and the doctor can call
15 a Medical Officer at the Board to discuss the case if he
16 wishes.

17 Workmen's Adviser

18
19 If a workman finds difficulty in
20 interpreting the evidence in preparing his appeal he may
21 consult the Workmen's Adviser at the Board to assist him.
22 The Workmen's Adviser has complete access to the Board's
23 files and can advise the workman accordingly.

24 In addition the Senior Administrative
25 Officer and his Assistants also have access to the entire
26 file and specialize in dealing with representatives of
27 workmen.

28 Confidential Reports

29
30 Reports from doctors, employers and



1 workmen are given to the Board in confidence. If the
2 Board's files were open these reports would not be frank
3 and informative. Information provided by the workman about
4 himself could provide employers with information
5 prejudicial to the workmen. Employers' reports might be
6 considered by some as prejudicial. The production of
7 these reports by the Board could create friction between
8 management and labour and thus hamper the effectiveness
9 of the Board. Doctors' reports can contain personal
10 information the release of which might provoke strong
11 protest with far-reaching effects.

12 In each instance the knowledge that
13 their reports would not be treated confidentially would
14 seriously impair the quantity and quality of information
15 given and fair assessment of claims would be impossible.
16 The Board's files could be the basis for argument and
17 possibly court actions on an adversary basis. This would
18 not only create serious delays in providing benefits but
19 would undermine the foundation of Workmen's Compensation
20 administration in Ontario.

21 THE COMMISSIONER: On the Appeal
22 Board how many are there?

23 MR. POOLE: Three, with the
24 Secretary who acts as an alternate for the Chairman, sir.

25 THE COMMISSIONER: Are they full-time
26 members, too?

27 MR. POOLE: Yes, sir, full-time.

28 THE COMMISSIONER: On the previous
29 review how many were there, prior to 1965?

30 MR. POOLE: There were three, with



1 alternates, sir.

2 MR. ESTEY: Mr. Poole, I wonder, to
3 start with, if you would tell us why the Board has the
4 policy which is indicated in Exhibit 1? This is a letter
5 sent by the Secretary of the Appeal Tribunal, signed by
6 W. J. Johnston, in August, 1966, replying to a request
7 for subpoenas, and the letter says in part:

8 "It is not the policy of the
9 Appeal Tribunal to subpoena any
10 witnesses to appear before the
11 Appeal Tribunal."

12 What is the reason for that?

13 MR. POOLE: I think the major reason
14 for this is the desire of the Board to be in the
15 position that it is not compelling people to appear
16 before it in a position of being sort of adversary to
17 the situation. The Board would much prefer the people
18 to bring their witnesses as they see fit; and in that
19 light also I think the biggest problem in the medical
20 field is that there is a real problem in bringing
21 medical witnesses. But, as I indicated, where it can
22 be shown that the type of witness that is extremely
23 material to the case and that really justice couldn't
24 be rendered, a subpoena would be issued.

25 MR. ESTEY: Does that apply in the
26 Appeal Tribunal as well?

27 MR. POOLE: They would have to go to
28 the Board to get approval to subpoena a witness. Only
29 the Board itself can subpoena.

30 MR. ESTEY: Have you any record of the



1 Appeal Tribunal on its own motion actually doing that?

2 MR. POOLE: No, frankly I haven't,
3 not in my own experience.

4 MR. ESTEY: I was wondering what the
5 workman would do if he had to challenge something that
6 a supervisor said or he thinks he said because it
7 appears in the summary of the evidence and he has to get
8 the foreman in there and he cannot get the foreman down
9 there and the Board won't subpoena him. What does he do?

10 MR. POOLE: He has the right. The
11 employer is notified of the right and of the hearing.
12 An employer's representative, not always but in a great
13 many cases, can be present. He can present his situation,
14 and, if not, the Tribunal can adjourn to have it done.

15 MR. ESTEY: It is up to the Tribunal
16 to request it for the workman?

17 MR. POOLE: Yes.

18 MR. ESTEY: But the workman cannot
19 do it without a subpoena?

20 MR. POOLE: That is right.

21 MR. ESTEY: Can you explain to the
22 Commissioner what the basis in policy is for the claim
23 or the assertion of privilege under Section 97? I think
24 it is with respect to X-rays and hospital treatment?

25 MR. POOLE: Well, we take the
26 position that the information provided to the Board by
27 doctors is provided in confidence and that we should not
28 break that confidence.

29 MR. ESTEY: Well, in general perhaps I
30 can follow that. But supposing the workman is hurt and



1 he is in a small town and he goes to a medical doctor who
2 is on hospital staff in a smaller community and his
3 family doctor says, "You better get that arm X-rayed",
4 so he takes the X-rays. The man has consulted a doctor
5 and the X-rays are not taken by the Board or on the
6 Board premises, but two or three years later he wants to
7 have that fracture reset and the specialist wants the
8 X-rays. Why won't the Board give the specialist the
9 X-rays?

10 MR. POOLE: We will give him the
11 X-rays; no question about that.

12 THE COMMISSIONER: If the request
13 came from a specialist, the Board would allow him access
14 to the files?

15 MR. POOLE: No question about it, sir.

16 MR. ESTEY: The reason I asked you
17 that is that amongst the papers we didn't have much time
18 to look at this morning there is a letter from the
19 specialist in the Medical Arts Building to the patient's
20 lawyers in which they say that they are instructed that
21 the surgeon may not give up those X-rays, and he advises
22 them to contact the Legal Department of the Workmen's
23 Compensation Board, and then a subsequent letter with
24 the Legal Department saying they cannot have those X-rays.
25 I wonder what underlay those decisions.

26 MR. POOLE: I think the policy
27 involved in this particular case, of which I have no
28 knowledge at the moment --- generally speaking, if a man
29 is being attended by a doctor and we require and ask for
30 a consultant's report, that man will get the consultant's
report so that he knows how to treat the man.



1 MR. ESTEY: Then whether or not the patient
2 gets it is up to his own doctor?

3 MR. POOLE: We feel that this is a relation-
4 ship of the patient-doctor.

5 THE COMMISSIONER: In the Ostrowski case, I
6 suppose it is complicated by the fact that he is
7 apparently seeking to start a malpractice action and
8 your position under those circumstances is difficult?

9 MR. POOLE: Frankly, I don't know the case
10 at all, sir.

11 MR. ESTEY: Now, may I turn, Mr. Poole, to
12 something else under the heading of Appeal Procedure.
13 Under what is called the good old system in some briefs
14 you people, despite the fact that it was an old system,
15 turned down the odd claim and when this claim was turned
16 down did you give any notice to the man that he had a
17 right of appeal?

18 MR. POOLE: No, sir.

19 MR. ESTEY: So, under the good old system,
20 he was not notified in any language that he had a right
21 of appeal?

22 MR. POOLE: Nothing official ever went out
23 from the Board.

24 MR. ESTEY: So, until March of 1965, he
25 had an appeal system of sorts, but it was not made known
26 to the people covered by the Workmen's Compensation Act?

27 MR. POOLE: That is right.

28 MR. ESTEY: That is the people rejected?

29 MR. POOLE: That is right, in the letters
30 that went to them there was no notification that they



1 had a right of appeal.

2 MR. ESTEY: Also, in the good old days, in
3 the course of your Review Committee operation, did you
4 have any method of letting the workman know that his
5 claim was being reviewed by the Review Committee? Were
6 any claims getting there automatically, or did they
7 only get there if somebody complained?

8 MR. POOLE: There would be situations in
9 which they might get there automatically or they might
10 get there on his appeal; in other words, if the Claims
11 Department were of the opinion that this is something
12 that should be dealt with at a higher echelon, they
13 would put it up there.

14 MR. ESTEY: But the workman would not know
15 that?

16 MR. POOLE: No, sir.

17 MR. ESTEY: And I suppose it is fair to say
18 that those other cases that got to the Review Committee
19 were not really appeals, but they were a further examina-
20 tion on a complaint?

21 MR. POOLE: Well, it depends on the nature
22 of what you consider an appeal. We have always con-
23 sidered that it was an appeal.

24 MR. ESTEY: Then, still on the old system,
25 if the Review Committee, however it got the file, felt
26 that the Committee required further information, I
27 suppose the practice was that they would dispatch an
28 investigator if it was a non-medical or they required
29 further evidence in the latter case, is that right?

30 MR. POOLE: Yes.



1 MR. ESTEY: And you used the Medical Referee
2 system in that era as well?

3 MR. POOLE: Yes, sir.

4 MR. ESTEY: And when you got the non-medical
5 and the medical evidence back in the Review Committee,
6 then the Review Committee made its decision?

7 MR. POOLE: That is true.

8 MR. ESTEY: All of which, I suppose, took
9 time in some cases?

10 MR. POOLE: In some cases, yes.

11 MR. ESTEY: In some cases it would not take
12 much time because you were dealing with a viewpoint of
13 old evidence, rather than an examination of new evidence?

14 MR. POOLE: Yes.

15 MR. ESTEY: So this time element, I suppose,
16 is rather illusory as a yardstick on whether a system
17 is good or bad?

18 MR. POOLE: That is pretty difficult, as I
19 indicated, to get any real statistics that are valid in
20 respect of either one of the systems.

21 MR. ESTEY: Because sometimes you need to
22 dig up more information and that takes time in itself:
23 other times you don't have to?

24 MR. POOLE: That's right.

25 MR. ESTEY: I suppose when we are talking
26 about the old system the length of time involved in
27 disposing of a file would depend upon how long it took
28 the workman to complain or appeal, whichever is the
29 right word?

30 MR. POOLE: That is right.



1 MR. ESTEY: So when you put a statistical
2 yardstick down on your file, you have to know how much
3 time was used up by the workman not lodging his appeal
4 promptly?

5 MR. POOLE: That is right.

6 MR. ESTEY: Then, let me switch now - now
7 one last stage in the old procedure was to get the
8 appeal passed to the Review Committee and then another
9 complaint comes in or an appeal comes in from the work-
10 man or someone on his behalf and then it went to the
11 whole Board?

12 MR. POOLE: That is right.

13 MR. ESTEY: Were there any regulations any-
14 where setting up this procedure of reaching the full
15 Board?

16 MR. POOLE: Well, the situation was, if an
17 appeal came in or a complaint or whatever you wish to
18 call it, that the Review Board could not confirm their
19 own decision.

20 MR. ESTEY: So it had to go upstairs?

21 MR. POOLE: It had to go upstairs.

22 MR. ESTEY: But there was nothing in the
23 statute that I could find to cover that?

24 MR. POOLE: No.

25 MR. ESTEY: And nothing in regulations to
26 cover it?

27 MR. POOLE: No.

28 MR. ESTEY: It was simply an administrative
29 practice?

30 MR. POOLE: That is right.



1 MR. ESTEY: Then, when it got to the Board,
2 the full Board, was the workman as a matter of constant
3 practice always present, or his representative?

4 MR. POOLE: Not necessarily.

5 MR. ESTEY: Was he given the opportunity?

6 MR. POOLE: Not always. The Board could
7 decide the claim on the information as they saw it on
8 the file.

9 MR. ESTEY: So it was rather an informal
10 appeal?

11 MR. POOLE: That is right.

12 MR. ESTEY: At which the workman might be
13 present and might not be, might have notice and might
14 not have notice?

15 MR. POOLE: That is right.

16 MR. ESTEY: I see, and your statistics show
17 under the old system the last year in which it was in
18 operation you had, looking at your page 6, 918 claims
19 dealt with by the Board itself?

20 MR. POOLE: That is right, sir.

21 MR. ESTEY: So that the Board was handling
22 at that time quite a volume of business on appeal?

23 MR. POOLE: That is right.

24 MR. ESTEY: And that is the twelve month
25 figure and that compares to 19 appeals on a nine month
26 basis or ten months?

27 MR. POOLE: Yes, but I think in fairness,
28 we should indicate the number of claims that we have
29 had, appeals that there have been this year, and I have
30 a statement to that effect too.



1 MR. ESTEY: 1966?

2 MR. POOLE: 1966.

3 MR. ESTEY: That would be how many months?

4 MR. POOLE: That is ten months.

5 THE COMMISSIONER: Is this 1964 for ten
6 months only?

7 MR. ESTEY: 1964 is for twelve months, but
8 over on page 7 the 19 appeals, I take it, are for nine
9 months because the Tribunal only started in March?

10 MR. POOLE: That is right.

11 MR. ESTEY: So if you extended the thing,
12 you would have 25 appeals a year, compared to 918, but
13 what are the figures for 1966?

14 MR. POOLE: To this date, the Board has
15 handled 77 appeals, not entirely 77 appeals - 57 appeals.
16 There have been 20 cases under Section 16 of the Act.

17 MR. ESTEY: We will see what that one says.

18 THE COMMISSIONER: These are appeals at
19 the highest level, 57?

20 MR. POOLE: Yes, sir.

21 MR. ESTEY: You distinguish between this
22 kind of appeal and the general kind?

23 MR. POOLE: That is not an appeal, the Board
24 must hold all Section 16 hearings and make the determina-
25 tion themselves.

26 THE COMMISSIONER: 57, of which 16 were under
27 Section 16?

28 MR. POOLE: No, sir, 77, of which 20 were
29 under Section 16.

30 THE COMMISSIONER: 77, of which 20 were under



1 16?

2 MR. POOLE: That is right.

3 MR. ESTEY: That is on this attachment to
4 your memorandum?

5 MR. POOLE: Yes.

6 MR. ESTEY: And that takes it right down to
7 the 23rd of September?

8 MR. POOLE: That is correct, sir.

9 MR. ESTEY: So I take it that a comparable
10 figure to 918 in 1964 would be something in the neighbour-
11 hood of - that 918, would that include Section 16
12 appeals?

13 MR. POOLE: It also included Section 16.

14 MR. ESTEY: So, about 100 would be a full
15 year in round figures compared to 900?

16 MR. POOLE: That is right.

17 MR. ESTEY: So at least at that point the
18 effect of a new appeal procedure is to lift from the
19 Board's shoulders this great volume of appeals something
20 at the rate of about 18 a week?

21 MR. POOLE: That is quite true.

22 THE COMMISSIONER: Then, down below that,
23 I see the Review Committee in 1965 had 2,350 cases to
24 review and in 1966, 2,295?

25 MR. POOLE: That is right.

26 THE COMMISSIONER: So, roughly, the same
27 number of cases were being processed in the appeal
28 procedure. Then we come to the Appeal Tribunal and
29 now you are having double the number of appeals, somewhat
30 more than twice as many appeals from the Review Committee



1 as you formerly had from the - oh, I see.

2 MR. POOLE: These are all of them.

3 THE COMMISSIONER: This is 1965 and 1966.
4 This does not give any indication of what the situation
5 was in 1964. Yes, in 1964, the number of cases con-
6 sidered by the Review Board, they only considered
7 1,123 cases and they only held hearings on 75?

8 MR. POOLE: That is correct.

9 THE COMMISSIONER: So, it obviously is the
10 case that for whatever reason, the claimants are taking
11 advantage of the appeal procedure to a much greater
12 extent than formerly?

13 MR. POOLE: Very definitely, sir.

14 MR. ESTEY: I suppose it would follow that
15 that is the case - perhaps there are other reasons -
16 but now you are giving a notice that they have a right
17 of appeal?

18 MR. POOLE: There is no question that they
19 haven't.

20 MR. ESTEY: Your notice practically invites
21 them because they now have the notice whereas formerly
22 they never did?

23 MR. POOLE: Yes.

24 MR. ESTEY: That is repeated at each stage
25 of the game?

26 MR. POOLE: Yes, sir.

27 MR. ESTEY: Let us go to the new system,
28 March, 1965, which I will call the new system. To
29 begin with, I am interested in the initial review or
30 assessment of the file. Is there any change in the



1 practice of claims investigation officers, the first man
2 who gets the file in requiring investigators to attend,
3 or ordering additional medical evidence?

4 MR. POOLE: There has been no change whatso-
5 ever.

6 MR. ESTEY: He investigates as aggressively
7 under the new system at that level as he did under the
8 old system at that level?

9 MR. POOLE: We feel that probably he is
10 able to do a better job now than he did before and this
11 will come up later in the adjudication of claims topic,
12 but we have revised and streamlined the Claims Department
13 with the result that those who are adjudicating
14 claims are given a greater time to do their job, in that
15 they have had a lot of extraneous matters taken away
16 from them to allow them to spend their time strictly
17 on that.

18 MR. ESTEY: Now, under a Review Committee's
19 procedure in the new system, does the Review Committee
20 put in the same effort to obtain the full story as the
21 old Review Committee did, that is to say, can they
22 still requisition a further investigation, can they
23 still order an additional medical examination, and so
24 on?

25 MR. POOLE: That is quite correct, yes.

26 MR. ESTEY: So, is it a fair comparison
27 to say that in the second stage of the new system the
28 internal examination by the Board of this claim is at
29 least as rigorous as the second stage under the old
30 system?



1 MR. POOLE: Quite as rigorous.

2 MR. ESTEY: Now, before I get to the third
3 stage, it has been said by three or four representatives
4 of associations here that this new system suffers, in
5 that, unlike the old system, representatives of the
6 workmen are not able to communicate with the Claims
7 Department and the Review Committee staff at the time
8 of, or before a Review Committee decision, you have
9 heard that?

10 MR. POOLE: Yes.

11 MR. ESTEY: Have you any comments to make
12 on that?

13 MR. POOLE: Well, there is no question that
14 we have set up within the Claims Department a group
15 which we call the Chief Administrative Officer and his
16 assistant, whose whole duty is to be in that position
17 of assisting and advising, providing information that
18 is requested in the whole realm of the area where
19 people want information. At the level of the Review
20 Committee, there is not a personal contact situation.

21 MR. ESTEY: And there wasn't before?

22 MR. POOLE: Not if the claim was not on a
23 hearing basis.

24 MR. ESTEY: If it was, and there were 75
25 on that basis, then the workman could appear directly
26 or through a representative?

27 MR. POOLE: That is right.

28 MR. ESTEY: But as I read your figures, that
29 was a very tiny percentage of your total Review Claims.

30 MR. POOLE: That is right.



1 MR. ESTEY: Now, I take it that other than
2 those comments, the Review Committee, Stage 2, is
3 precisely the same under the new system as under the old,
4 you can't have the personal appearance now, but other
5 than that it remains the same?

6 MR. POOLE: Yes, and, as a matter of fact,
7 there are two people occupying positions that were on
8 the Review Board before.

9 MR. ESTEY: As a matter of fact, there is
10 one other difference but it goes the other way, that now
11 every file being reviewed by the Review Committee is
12 the subject of a notice to the workmen?

13 MR. POOLE: That is right.

14 MR. ESTEY: And that was not true before?

15 MR. POOLE: That is right.

16 MR. ESTEY: When you come to the new appeal
17 level, the Appeal Tribunal --

18 THE COMMISSIONER: I am sorry, I have not
19 been following that.

20 MR. ESTEY: Under the old system they did
21 not necessarily appeal only on the motion of the work-
22 man, but sometimes it came up from the Claims Department,
23 in which case the workman never knew that an objection
24 was being appealed. In fact, he didn't know it had been
25 rejected at that stage.

26 MR. POOLE: He didn't know it had been
27 rejected.

28 THE COMMISSIONER: I see. Every claim that
29 was rejected went automatically to that Review Board
30 previously?



1 MR. ESTEY: Some did and some went on the
2 basis because there wasn't a complaint or an appeal -
3 both kinds of files reaching the Review Committee.

4 MR. POOLE: The first group that the
5 Commissioner mentioned, sir, that is, the files that were
6 rejected that went there automatically not necessarily
7 were rejected at the level of the Claims Department.
8 They would review it, possibly have a disagreement at
9 the level of the Claims Department and would send it for
10 a higher authority to decide it.

11 MR. ESTEY: So that there might be a split
12 decision down below and they would send it upstairs for
13 a decision, but the workman would not know anything about
14 it at all?

15 MR. POOLE: That is right.
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BL/SS 1 MR. ESTEY: Now, we come to this Appeal
2 Tribunal ---
3 THE COMMISSIONER: If, learning for
4 the first time that the case has been turned down, he
5 asked the Review Board to adjust the pro forma, there
6 would really be no review at all.
7 MR. POOLE: If they heard him and
8 could not confirm on the evidence the decision that had
9 already been made, they must refer the file to the Board
10 because they could not confirm their own decision.
11 THE COMMISSIONER: In other words,
12 if it had already been referred to the Review Board and
13 the Board had made a decision, the man then asked to
14 appeal, to go directly to the Board itself?
15 MR. ESTEY: So he only had one right
16 of appeal.
17 MR. POOLE: In certain cases, yes.
18 MR. ESTEY: This Appeal Tribunal
19 started in March, 1965, and it had no predecessor under
20 the old system.
21 MR. POOLE: That is right.
22 MR. ESTEY: And you told the
23 Commissioner that an Appeal Tribunal consists of three
24 people.
25 MR. POOLE: Yes, sir.
26 MR. ESTEY: How does the workman get
27 to the Appeal Tribunal? What does he have to do?
28 MR. POOLE: On appeal from the
29 decision of the Review Committee.
30 MR. ESTEY: How does he do it?



1 MR. POOLE: Simply writes a letter.

2 MR. ESTEY: Does he have to use a
3 form?

4 MR. POOLE: No.

5 MR. ESTEY: Just writes a letter?

6 MR. POOLE: Yes.

7 MR. ESTEY: Does he have to give his
8 reasons?

9 MR. POOLE: I think we would like to
10 say that reasons would be happy to be received; but,
11 quite frankly, we accept an appeal on just where he wants
12 to appeal.

13 MR. ESTEY: You invite him to do it?

14 MR. POOLE: Yes.

15 MR. ESTEY: Does he have any time
16 limit within which he must write that letter?

17 MR. POOLE: No, sir.

18 MR. ESTEY: I suppose in practice he
19 has. If he leaves it too long he gets a short hearing,
20 but there is no limit after which he is cut off.

21 MR. POOLE: No.

22 MR. ESTEY: Has there ever been a
23 suggestion in your policy since you introduced this
24 system that, in the interests of speedy processing, there
25 should be a time limit?

26 MR. POOLE: Yes, there have been
27 suggestions. There have also been suggestions that when
28 it gets to too many postponements it should be shut off.

29 MR. ESTEY: That is postponements by
30 the man, not by the Board?



1 MR. POOLE: That is right.

2 MR. ESTEY: I am curious to know why there is
3 not a time limit within which the workman must appeal,
4 bearing in mind that the dust of time covers over the
5 evidence and memories fail.

6 MR. POOLE: Well, quite frankly, the
7 Board has taken the position that it wasn't necessary to
8 have a time limit.

9 MR. ESTEY: It is still academic;
10 there is no request for it, no real need for it yet.

11 MR. POOLE: Not yet.

12 THE COMMISSIONER: I have seen quite
13 a few letters come in to me and the man is raising some-
14 thing eight or nine years ago, and the Board informed me
15 that he could appeal if he chose to.

16 MR. POOLE: That is right. The Board
17 has taken the position that there is no time limit, if
18 there is evidence of continuing liability.

19 THE COMMISSIONER: This comes up in
20 connection with how long after an accident a claim can
21 be made.

22 MR. ESTEY: Now, at the time of this
23 Appeal Tribunal, at that stage, the man serves his
24 notice, and you say in reply to that that if he wants a
25 summary of the file, of the facts, he can get that on
26 request.

27 MR. POOLE: That is right.

28 MR. ESTEY: I take it he already has
29 a reasonable summary because he got a decision from the
30 Review Committee which sets out the reasons.



1 MR. POOLE: Yes.

2 MR. ESTEY: And these reasons in
3 some cases make some reference to the facts, of course.

4 MR. POOLE: Yes, but it is much
5 shorter than the summary.

6 MR. ESTEY: And that summary is then
7 prepared in what branch of the Board?

8 MR. POOLE: It is prepared in the
9 Review Committee and has to pass through the people that
10 did the adjudicating in the claim and they must initial
11 the summary, indicating that this is a satisfactory
12 statement insofar as they are concerned upon the
13 evidence on which they rendered their decision.

14 MR. ESTEY: Who does that?

15 MR. POOLE: The two members of the
16 Review Committee who rendered the decision, sir.

17 THE COMMISSIONER: Would one of
18 those be a medical man?

19 MR. POOLE: One would not necessarily
20 have to be, but if he is involved in the initial discus-
21 sion he would initial it.

22 THE COMMISSIONER: I am thinking of
23 some obscure medical gobbledygook in some of the
24 examples that have been given us, where a man says he
25 had difficulty in understanding it. I can understand
26 why he did. In those cases is that just taken off the
27 files?

28 MR. POOLE: We feel, sir, as I
29 indicated here, that we should not interfere with the
30 evidence that has been presented and that we should give



1 the man a verbatim statement of the pertinent facts so
2 that he can, using that report, go and get advice.

3 MR. ESTEY: But that summary is made
4 by the Tribunal or agency which turned down the claim.

5 MR. POOLE: That is right.

6 MR. ESTEY: So I suppose it is
7 subject to the criticism to which all human frailties
8 are subject, that that report favours the Board that
9 turned it down.

10 MR. POOLE: I think it is not exactly
11 that. I think it is to show the man the evidence, point
12 up the evidence to him that led to his rejection.

13 MR. ESTEY: But would it set out all
14 the evidence that was on the other side of the coin?

15 MR. POOLE: I think that would be
16 involved in it, but there might be medical things left
17 out.

18 MR. ESTEY: Would you have any samples
19 of these summaries which would not reveal the identity
20 of the man?

21 MR. POOLE: Yes.

22 MR. ESTEY: Before I get into this
23 in any detail I would like to ask you one more question
24 about this summary. Does the Workmen's Adviser have
25 access to that summary at that time? Does he have to
26 approve it as a fair summary?

27 MR. POOLE: No, sir.

28 MR. ESTEY: Is there any suggestion
29 made that that person might be of a little more neutral
30 character?



1 MR. POOLE: It hasn't come up, but I
2 suppose it is a good suggestion.

3 MR. ESTEY: Now, you have given us
4 a handful of documents here which appear to be a covering
5 letter forwarding the summary. What is this top letter?

6 MR. POOLE: This is a letter advising
7 him that we are enclosing the summary and we would like
8 to point out to him that it is his personal property and
9 it is of a confidential nature, and if in considering
10 this information he decides to appeal to the Tribunal
11 he can do so. There are two types of letters here.
12 There is one in which he indicates he intends to appeal
13 to the Appeal Tribunal and the summary is provided to
14 him. This one is where the man has written in saying
15 he is not happy with the decision that has been made,
16 and he is advised if he wishes to go to the Tribunal he
17 can do so.

18 MR. ESTEY: And the second one says:
19 "If, after considering this
20 information, you decide to
21 appeal to the Appeal Tribunal,
22 this should be in writing and
23 should contain any further
24 material to support your claim."

25 But you don't mean by that that you must have it?

26 MR. POOLE: We mean that he should
27 advise in writing if he wishes to appeal.

28 MR. ESTEY: In both letters I see
29 you direct the recipient's attention to the services of
30 Mr. Brawley, the Workmen's Adviser.



1 MR. POOLE: Yes, sir.

2 MR. ESTEY: I don't suppose you can
3 tell us how frequently from your statistics he is
4 involved in these appeals?

5 MR. POOLE: No, frankly I can't. I
6 haven't any statistics on it.

7 MR. ESTEY: Is he a lawyer?

8 MR. POOLE: No. He is a man of probably
9 30 years' experience with the Board.

10 MR. ESTEY: Having come through the
11 Claims Department and so on?

12 MR. POOLE: Yes.

13 MR. ESTEY: Would this be his only
14 duty?

15 MR. POOLE: This is his only duty.

16 MR. ESTEY: And after he is contacted
17 what is his function?

18 MR. POOLE: It is to assist the man
19 in any way he can. The man can come in and discuss the
20 case with him, he can do it by correspondence, but he
21 does not appear with the man.

22 THE COMMISSIONER: I don't know
23 whether they still have them or not, but they used to
24 have pension advocates in connection with war pensions,
25 and that pension advocate, I think, had access to the
26 files. If my memory also serves me right, the pension
27 advocate also had the job of presenting the case on
28 appeal, but I suppose the Workmen's Adviser has access
29 to all the files.

30 MR. POOLE: That is right.



1 THE COMMISSIONER: But he doesn't
2 have any duties on appeal itself.

3 MR. POOLE: No.

4 THE COMMISSIONER: Other than advise
5 him.

6 MR. POOLE: He is strictly as his
7 name indicates: he is an adviser to the workmen.

8 THE COMMISSIONER: And he would
9 advise, I suppose, the union representatives representing
10 the workman?

11 MR. POOLE: Surely.

12 THE COMMISSIONER: I think, Mr. Estey,
13 we might break for ten minutes.

14
15 ---Short recess.

16
17 MR. ESTEY: Now, Mr. Poole, before we
18 get into this evidence too deeply we should put on the
19 record that you have now re-organized for the convenience
20 of the Commission some sample letters which you gave us
21 just before the adjournment and which we numbered
22 Exhibit 6. Exhibit 6, page 1, now consists of the
23 letter of rejection from the Claims Department to the
24 workman, and this is the first notice he has that his
25 claim has been rejected. Is that correct?

26 MR. POOLE: That is correct.

27 MR. ESTEY: And then Exhibit 6-2,
28 page 2, is a notice to the workman that the Review
29 Committee has decided that his appeal must be rejected.
30 6-3A is a letter which forwards to the man a copy of the



1 summary of information in response to a request from him
2 which does not amount to a notice of appeal; and Exhibit
3 6-3B is a similar letter in response to a request for
4 a summary, but is addressed to a man who has given a
5 notice of appeal. Following that there are samples of
6 these summaries of information. They are actual samples
7 sent by the Board to the workman under cover of one of
8 those letters.

9 MR. POOLE: That is right.

10
11 ---EXHIBIT NO. 6:

Group of form letters as
sent by The Workmen's
Compensation Board.

12
13
14 MR. ESTEY: We have go up to the
15 Appeal Tribunal in the appeals procedure. At this stage
16 of the game the man has received a copy of the summary
17 of evidence, he has received an opportunity of talking
18 to the Workmen's Adviser, and he knows he has the
19 right to counsel at that time; is that right?

20 MR. POOLE: He knows he has the
21 right to retain.

22 MR. ESTEY: I am just looking at
23 your letters to see where he is told that. Can you
24 help me with that, Mr. Poole?

25 MR. POOLE: No. This is the
26 notification that goes out from the Tribunal of the
27 hearing, advising him that the hearing is set. We
28 will have to add that. We didn't bring it, I am
29 sorry.

30 MR. ESTEY: You haven't got that



1 with you?

2 MR. POOLE: No.

3 MR. ESTEY: All right, we can get
4 that. When he is notified of the date of the hearing, the
5 notice says that he may have someone representing him or
6 accompanying him.

7 MR. POOLE: Yes.

8 MR. ESTEY: I refer you to the second
9 last paragraph, which says:

10 "The grounds for your appeal
11 must be submitted in writing,
12 giving any further particulars
13 which might assist your case."

14 I am wondering why the Board feels the man must submit
15 his grounds for appeal in writing. In fact, you don't
16 require him to do so, do you?

17 MR. POOLE: Not really. At the back
18 of this letter to the ---

19 MR. ESTEY: It is page 2 of Exhibit
20 6. We have not referred to it before, but it comes up
21 in connection with the wording used in 3A and 3B, except
22 that it has been made much clearer here that the grounds
23 must be submitted; but, in fact, you don't require that.
24 How much time in practice does the Board give the man
25 after he has received the summary of evidence before
26 the hearing date is established?

27 MR. POOLE: Certainly it is in excess
28 of two weeks. It depends on the calendar of the
29 Tribunal, and he is advised that the date has been
30 selected and if for any reason he cannot attend, he



1 should advise by such and such a date that he is unable
2 to do so. If he is unable to do so, another date will be
3 set.

4 MR. ESTEY: But that notice usually
5 has a two-week gap in it or more, from the date it is
6 sent out to the date of the hearing?

7 MR. POOLE: Yes.

8 MR. ESTEY: And the man is advised
9 to give proper grounds to have it adjourned.

10 MR. POOLE: Yes.

11 MR. ESTEY: Are all the witnesses
12 sworn, under oath?

13 MR. POOLE: Yes.

14 MR. ESTEY: And anyone who plays a
15 role in that evidence must testify, having taken the
16 oath?

17 MR. POOLE: Yes.

18 MR. ESTEY: It has been said many
19 times here that cross-examination is not permitted.

20 MR. POOLE: Right.

21 MR. ESTEY: Is that an absolute rule,
22 that you never allow anyone to cross-examine?

23 MR. POOLE: I think the situation is
24 this, that the Board does most of the questioning itself.
25 It is either at the level of the Tribunal or the Board
26 itself, because they are the ones that are anxious to
27 bring out all of the information. The man usually makes
28 his statement as to what has happened, what has been the
29 conduct of the case, and if his representative wishes to
30 question him, he can do so to bring out the points he



1 wishes to make, and then the Board usually takes over to
2 bring out all the points they feel are necessary.

3 MR. ESTEY: Do all the members of the
4 Board have the file at the hearing?

5 MR. POOLE: No. The file is present,
6 but generally speaking in the case of the Tribunal they
7 go through and make a resume of the file and only the
8 Chairman has the actual file.

9 MR. ESTEY: But the Board members
10 have had a chance to read it?

11 MR. POOLE: Oh, yes.

12 MR. ESTEY: And if a medical man is
13 present, then he answers questions like anybody else?

14 MR. POOLE: Yes.

15 MR. ESTEY: In most of these cases is
16 a representative of the employer present?

17 MR. POOLE: I would say it is
18 increasing, but it isn't in all cases. Approximately
19 ten years ago there was less than 50%, far less than
20 50% of cases that the employer attended, but this is
21 gradually increasing

22 MR. ESTEY: What role does he play at
23 the hearing? Does he examine the witnesses who come
24 forward?

25 MR. POOLE: No.

26 MR. ESTEY: The employer does not?

27 MR. POOLE: He makes his statement and
28 the Board may question him on the basis of information
29 that he may give to the Board.

30 MR. ESTEY: Does the Board generally



1 call witnesses?

2 MR. POOLE: Sometimes they do, some-
3 times they don't.

4 MR. ESTEY: If they do, does their
5 representative examine the witnesses in most instances?

6 MR. POOLE: They can.

7 MR. ESTEY: But generally speaking?

8 MR. POOLE: I think generally speaking
9 it is at the pleasure of the employer's representative.

10 MR. ESTEY: Where there is a
11 conflict in the version of the story as to the accident
12 between the witnesses supplied by the representative
13 of the workman and the witnesses supplied by the
14 employer does the Board ask the questions?

15 MR. POOLE: It is for the Board to
16 resolve that.

17 MR. ESTEY: But even under those
18 circumstances the Board does not allow one side or the
19 other to put questions to the other side's witnesses?

20 MR. POOLE: That is correct.

21 MR. ESTEY: Is there any reason for
22 that?

23 MR. POOLE: They don't wish to put
24 it into an adversary situation.

25 MR. ESTEY: During these hearings
26 where the workman is claiming against the fund and he
27 is advancing his reasons for the claim, who plays the
28 role of the defender of the fund?

29 MR. POOLE: Well, I don't think that
30 the Board has ever taken the position that they are the



1 defender of the fund as such, sir. They are there to
2 administer an Act, and if it comes within the provisions
3 of the Act it is a charge on the fund.

4 MR. ESTEY: That is the result
5 without regard to the state of affairs in the fund or
6 anything else?

7 MR. POOLE: That is right.

8 MR. ESTEY: So what you are saying is
9 that in the view of the Board there is no place here in
10 the adversary system because there is no defendant.

11 MR. POOLE: That is correct. There is
12 a claimant but no defendant.

13 THE COMMISSIONER: These sections of
14 the Act were put there by the Legislature, not by you.

15 MR. POOLE: I think that is correct.
16 I think that it was in Section 24.

17 THE COMMISSIONER: If it is in the
18 interest of the accident fund.

19 MR. POOLE: I could give you the
20 interpretation that the Board puts on that particular
21 section. That section is used by the Board where a man
22 will have a permanent disability but behind that
23 permanent disability is something that is of a serious
24 nature which, if cleared up, would reduce the permanent
25 disability. So the Board has been given the privilege by
26 the Act to do something for that man by way of medical
27 treatment, bearing no relationship to the accident
28 whatsoever, to lessen the permanent disability.
29
30



1 THE COMMISSIONER: Something they would not
2 be able to do on a straight compensation basis?

3 MR. POOLE: That is right.

4 THE COMMISSIONER: But it didn't stem from
5 the accident?

6 MR. POOLE: That is right.

7 MR. ESTEY: Just as a matter of curiosity,
8 I suppose you always have to get the victim's consent?

9 MR. POOLE: Oh, by all means.

10 MR. ESTEY: The statute doesn't say so, I
11 was just wondering. Now, let us get back to this
12 question of proceeding in the Appeal Tribunal. You
13 will appreciate, Mr. Poole, that one-half of the
14 community, not numerically, but one-half by philosophy
15 is paying the cost of this whole operation, and the
16 other half is getting the benefit if he has been injured
17 and, naturally, he who pays the cost has an interest
18 in keeping the cost down. Now, my question to you is,
19 what part of the proceeding, if any, before these
20 appellant tribunals is devoted to the detection of
21 improper claims and claims which may be said to be
22 based on malingering, fraudulent claims, and that kind
23 of thing. What does the Board do, faced with the
24 possibility of that kind of thing coming before it?

25 MR. POOLE: Well, this starts at the level
26 of the Claims Department in the investigation. The
27 investigation starts with making sure that it is a case
28 coming within the meaning of the Act. As it goes
29 through the appeal procedure, this always must be kept
30 in mind that this may not be within the meaning of the



1 Act and there may be fraud, there may be many things
2 involved. I don't think that we do at any time
3 deliberately place people in the position of, shall we
4 say, facing them with a malingerer charge, but I think
5 that we are well aware when this occurs from the reports
6 that we get, we are well aware of the situations in
7 fraud and have detected situations in fraud.

8 MR. ESTEY: I take it that so far as the
9 mechanics of the appeal are concerned, which we are
10 talking about today, that that kind of examination of
11 witnesses is conducted by the Board?

12 MR. POOLE: By the Board.

13 MR. ESTEY: And not by the representative of
14 the employer, and not by someone in the shoes of the
15 Crown Attorney or an inquisitor, and I take it that
16 at no time in the history of the Board that you are
17 aware of has the Board tried the practice of a friend
18 of the court in judicial language or a pensions
19 advocate in the Canadian Pension Commission sense?

20 MR. POOLE: Not to my knowledge, sir.

21 MR. ESTEY: Then I have asked you before
22 about time limits and going from one stage to the next.
23 In order to gather this all together, I take it there
24 is no time limit imposed on the appeal from the Appeal
25 Tribunal either?

26 MR. POOLE: No, sir.

27 MR. ESTEY: The right of appeal to the
28 Board never dies?

29 MR. POOLE: That is right.

30 MR. ESTEY: Now, when you proceed to the



1 next stage - and, of course, that is only necessary if
2 the Appeal Tribunal rejects the claim.

3 MR. POOLE: That is right.

4 MR. ESTEY: By the way, is that done with
5 written reasons in all cases?

6 MR. POOLE: Yes, sir.

7 MR. ESTEY: Whether or not it is done at
8 the time of the hearing, the man does get written
9 reasons?

10 MR. POOLE: Oh, yes, that is right.

11 MR. ESTEY: Perhaps you would be good enough,
12 if you would, to give us a sample of those. Will you
13 give us a sample tomorrow of the notice, or do we have
14 one?

15 MR. POOLE: It is contained in Exhibit 6,
16 stating the decisions and reasons for decision.

17 MR. ESTEY: You have not got a sample
18 which has been cleaned up so you can't tell the names
19 of the parties, that is the problem, isn't it?

20 MR. POOLE: That is right.

21 MR. ESTEY: Perhaps you could remove the
22 names of one completely and it might be easier if we
23 simply added it as the last page of Exhibit 6. That is
24 the next stage in the cycle, isn't it?

25 MR. POOLE: Yes.

26 MR. ESTEY: Then after he has got his
27 decision - and, by the way, does the Appeal Tribunal
28 procedure leave room for a dissenter?

29 MR. POOLE: No, sir, there is no minority
30 report.



1 MR. ESTEY: I see the sample you gave me is
2 signed by all three. If one man says, "I would do the
3 opposite to the other two", what happens?

4 MR. POOLE: They usually sit down and resolve
5 the situation.

6 MR. ESTEY: So that in 1965, this Tribunal --

7 THE COMMISSIONER: I am afraid we can't do
8 that in the Court of Appeal.

9 MR. ESTEY: They heard 215 appeals and they
10 had unanimous decisions in 215, that is the upshot of
11 that.

12 MR. POOLE: Yes.

13 THE COMMISSIONER: They may proceed, I
14 suppose, as they proceed in the Privy Council where
15 there is only one opinion given. It is not like the
16 judgment of a court and it is agreed that one opinion
17 goes out of that party.

18 MR. ESTEY: Except that here, Mr. Chairman,
19 everybody signs it. These are all signed.

20 THE COMMISSIONER: It might be better if
21 they weren't all signing.

22 MR. ESTEY: Then you get on from the
23 Appeal Tribunal and that has all been taken down by
24 shorthand?

25 MR. POOLE: Yes.

26 MR. ESTEY: That is paid for by the Board?

27 MR. POOLE: Yes.

28 MR. ESTEY: By the way, do you ever invoke
29 the powers of the Act to award costs to the successful
30 appellant? I think Section 74 allows you to do that, if



1 my memory is correct.

2 MR. POOLE: This has been a matter of some
3 consideration, but nothing has been done about it.

4 MR. ESTEY: Never been done yet?

5 MR. POOLE: No.

6 MR. ESTEY: Then we get on to the matter of
7 an appeal to the Board itself that is, by a notice from
8 the man to the Board staff that he wishes to be heard
9 by the full Board?

10 MR. POOLE: Yes.

11 MR. ESTEY: Then there is no formality?

12 MR. POOLE: No.

13 MR. ESTEY: Does he have to say why he wants
14 to be heard by the next rung on the ladder?

15 MR. POOLE: We would like him to give us
16 some basis on it, but we usually grant it.

17 MR. ESTEY: Then, again, how does he know
18 when that is going to be heard?

19 MR. POOLE: In much the same method as the
20 Tribunal.

21 MR. ESTEY: Is he also again referred to the
22 workman's advisor?

23 MR. POOLE: He could be, yes.

24 MR. ESTEY: Does the notice setting the
25 date for hearings so refer him?

26 MR. POOLE: No, specifically not.

27 MR. ESTEY: He would know from the refer-
28 ence you made in the notice with respect to the Appeal
29 Tribunal and presumably if he had made contact with the
30 worker's advisor he would know that he could avail



1 himself of that service again?

2 MR. POOLE: That is right.

3 MR. ESTEY: But if he never went near him at
4 that level, how would he know he could at the next level?
5 He wouldn't know, would he?

6 MR. POOLE: No.

7 MR. ESTEY: Now you get down to the Board
8 hearing. Does the appellant get a copy of the transcript
9 of the Appeal Board?

10 MR. POOLE: Yes, on request.

11 MR. ESTEY: If he requests it?

12 MR. POOLE: If he requests it.

13 MR. ESTEY: How does he know he can request
14 it?

15 MR. POOLE: That I couldn't tell you at the
16 moment.

17 MR. ESTEY: I put the question to you
18 because that is not the case if a man had a lawyer.
19 He would be most surprised to find out that he could
20 get a transcript of the court below on request. It is
21 somewhat unusual, it is a better service than we are
22 accustomed to. So he doesn't know that is available
23 until he asks for it. So then he gets it. Does he
24 get it in time to see it before the hearing?

25 MR. POOLE: Oh, yes.

26 MR. ESTEY: Who pays for that transcript?

27 MR. POOLE: We do.

28 MR. ESTEY: Does the employer's representa-
29 tive get a copy of the transcript?

30 MR. POOLE: He is entitled to it if he



1 requests it.

2 MR. ESTEY: If the appellant requests it,
3 does it automatically go to the employer?

4 MR. POOLE: No.

5 MR. ESTEY: Again, he must ask for it?

6 MR. POOLE: He must ask for it.

7 MR. ESTEY: I suppose the opposite is true,
8 if the employer asks for it, it does not automatically
9 go to the appellant?

10 MR. POOLE: That is right.

11 MR. ESTEY: Does the Workmen's Compensation
12 Board get a copy of the transcript of the Appeal
13 Tribunal's transcript?

14 MR. POOLE: You mean if they are going to
15 hear the case? If they are going to hear the case they
16 have that before them.

17 MR. ESTEY: Do they always have a trans-
18 cript for the proceedings below?

19 MR. POOLE: Yes.

20 MR. ESTEY: So it is typed up as soon as
21 the notice of appeal comes in and the only question is
22 how many people get a copy, that is the only doubt about
23 that?

24 MR. POOLE: That is right.

25 MR. ESTEY: Then when the appeal proceeds
26 they have the two parties in front of the Board, that
27 is the employee and the employer. If they don't have a
28 copy of the transcript I suppose on occasion they find out
29 there is a copy available during the hearing?

30 MR. POOLE: That could be, and then they



1 could ask for an adjournment.

2 MR. ESTEY: I suppose that has happened?

3 MR. POOLE: Yes.

4 MR. ESTEY: Is the hearing of the appeal by
5 the Workmen's Compensation Board itself a new trial all
6 over again of the whole business, do the witnesses come
7 again and talk?

8 MR. POOLE: It can be, but generally the
9 Board does try to keep it to the issues at stake. Having
10 been over the evidence, they try to keep it close to
11 the issues that are involved, rather than a long
12 rambling hearing.

13 THE COMMISSIONER: That is one of the things
14 I was wondering. If you are going to have in effect
15 a trial de novo before the Board, or hearing before
16 the Board, what is the necessity of having a transcript
17 of the evidence on the Court of Appeal level if it is
18 not going to be used for cross-examination and you are
19 going to have a complete new hearing?

20 MR. POOLE: I think it is on the basis that
21 it provides the information that has been provided before
22 and it serves to keep the thing on the issues at stake.

23 MR. ESTEY: I take it, since the Board
24 always gets a copy of the transcript, that is part
25 of the material they draw upon to make their decision?

26 MR. POOLE: Yes, sir.

27 MR. ESTEY: And whether or not anybody in
28 the nature of an appellant refers to the transcript,
29 the Board is going to read it as part of the record
30 in front of them?



1 MR. POOLE: That is right.

2 MR. ESTEY: Also, they have the file of the
3 Claims Department?

4 MR. POOLE: That is right.

5 MR. ESTEY: And then, in addition to that,
6 the appellant can call evidence if he wants to?

7 MR. POOLE: That is right.

8 MR. ESTEY: Can the employer call evidence
9 in front of the Board?

10 MR. POOLE: He surely can.

11 MR. ESTEY: And does it happen?

12 MR. POOLE: It has happened.

13 MR. ESTEY: Now, if either party calls
14 evidence before the Board, what use can the other party
15 make of this transcript they have of perhaps the same
16 witnesses' evidence down below? Suppose they change
17 their story slightly?

18 MR. POOLE: I think the Board has to make
19 up its mind as to which is the correct story.

20 MR. ESTEY: I suppose, in practice, what
21 will happen is if the employer calls a foreman who
22 changes his story from that which he told down below,
23 that the employee can get up and invite the Board to
24 ask the witness how come he has changed his mind?

25 MR. POOLE: That could be done.

26 MR. ESTEY: But you don't allow the workman
27 to get up and ask the foreman whether he is telling the
28 truth now or down below?

29 MR. POOLE: That is right.

30 MR. ESTEY: And so that is the limit of the



1 use you put on the transcript?

2 MR. POOLE: That is right.

3 MR. ESTEY: Again, does the Board in dis-
4 posing of the issue, award costs of any kind other than
5 workman's fees?

6 MR. POOLE: No.

7 MR. ESTEY: You compensate the medical
8 witnesses, I notice?

9 MR. POOLE: Oh, yes.

10 MR. ESTEY: It does not compensate the
11 successful appellant for having come all the way up
12 through this ladder of appeal to win at the top. He
13 gets nothing for his trouble except what he asked for
14 at the bottom?

15 MR. POOLE: That is right.

16 MR. ESTEY: And the reason for that is
17 what?

18 MR. POOLE: Well, as far as I can see, it
19 is a question that a man has an entitlement under the
20 Act which he has appealed, and is appealing whatever way
21 he may through the various areas of appeal, and his
22 entitlement is only that which is under the Act.

23 MR. ESTEY: And, again, I suppose it is in the
24 interests of reducing the cost of operating the
25 appellant system?

26 MR. POOLE: Yes.

27 MR. ESTEY: Then, speaking of that element
28 of the thing, is there any consideration given, or has
29 anyone suggested to the Board that by allowing a work-
30 man to appear at the Review Board stage that you might



1 do away with the Appeal Tribunal?

2 MR. POOLE: Well, I have heard it here. I
3 have not heard it specifically.

4 MR. ESTEY: Does the Board have any view as
5 to whether that would be a helpful thing, or perhaps
6 defeat the purpose of the appeal system?

7 MR. POOLE: Well, I think I would be inclined
8 to say this, with the volume that is at the level of the
9 Review Committee, if there was appearances it would
10 delay the consideration. It would mean that you took a
11 level of appeal away. The man has a right under this
12 system to have his claim looked at a second time on the
13 basis of a written information and whatever investiga-
14 tion might be made. Then he has the right to appeal,
15 remembering that there are some 2,000 that go before
16 the Committee. If that was all done on an appearance
17 basis, it would be --

18 MR. ESTEY: You have about 10 in a working
19 day, so if you had hearings it would be a pretty long
20 day. On the other hand, I suppose you can't have an
21 automatic review of all the rejects because that would
22 be 15,000 the Review Committee would have to process.
23 So I take it the present system is a compromise where
24 you take the second stage if requested, where the man
25 can't appear because there are just too many of them.

26 MR. POOLE: That is right.

27 MR. ESTEY: And out of that odd 2,000 you
28 weed out 500, so that you have 1,900 unhappy complainants
29 of whom some 250 appealed?

30 MR. POOLE: That is correct.



1 MR. ESTEY: Before we leave that then, I
2 take it what you are saying is that the Claims Division
3 has a sort of second department to it which is the
4 Review Board?

5 MR. POOLE: They are not part of the
6 department, sir.

7 MR. ESTEY: But still they review things?

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9 MR. POOLE: That is right.
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2 MR. ESTEY: And your first real
3 hearing of the appeal is the third level, and the fourth
4 is the last resort.

5 MR. POOLE: That is right.

6 MR. ESTEY: And the reason you have
7 the third level is to cut down the work of the Board?

8 MR. POOLE: Yes.

9 THE COMMISSIONER: The appeals that
10 are beginning to climb up to the Board itself, if that
11 became too heavy it might be necessary to shut off
12 appeals at that level, but to open them up down at the
13 Review Committee level.

14 MR. POOLE: It could be.

15 THE COMMISSIONER: In order to save
16 the Board's small numbers having to make individual
17 decisions on appeal.

18 MR. POOLE: That is correct, sir.

19 THE COMMISSIONER: In that event I
20 suppose you would have to increase the size of your
21 Review Board. Would that be possible?

22 MR. POOLE: Oh, yes, quite possible.

23 MR. ESTEY: Does either the Appeal
24 Tribunal or the Board in issuing reasons consciously
25 develop any set of rules, policies or precedents so
26 that the trade unions who habitually appear and the
27 employees who habitually appear have a code of behavior
28 in these appeals, thereby minimizing the number of
29 appeals?

30 MR. POOLE: I suppose anyone who is
appearing frequently can keep their little black book.



1 MR. ESTEY: There is no internal
2 publication of these?

3 MR. POOLE: No internal publication.

4 MR. ESTEY: Has any consideration ever
5 been given to that?

6 MR. POOLE: No. As a matter of fact,
7 the Board doesn't agree with it.

8 MR. ESTEY: They don't want to create
9 any rules to confine themselves in the future, I suppose.
10 Then I take it that the appeal procedure itself is not
11 a hard regulation because the Board wishes to be
12 flexible.

13 MR. POOLE: That is right.

14 MR. ESTEY: Do you know if the Board's
15 policy, after a reasonable trial, is to put it in the
16 form of regulation?

17 MR. POOLE: I have no knowledge of
18 that.

19 MR. ESTEY: The Ontario system of
20 appeal is unique in the Workmen's Compensation Board
21 field, I take it.

22 MR. POOLE: The four-level, yes.

23 MR. ESTEY: It is not in practice .
24 anywhere else, is it?

25 MR. POOLE: No.

26 MR. ESTEY: British Columbia has an
27 appeal system of a modified nature, has it not?

28 MR. POOLE: That is right.

29 MR. ESTEY: Can you describe that
30 briefly, without getting involved in detail?

MR. POOLE: I think probably the



1 simplest way is to say that it is the same system we had
2 prior to 1965. It is the use of a Review Board in the
3 same manner as we did.

4 MR. ESTEY: On a sort of rough-and-
5 ready right to take the matter up to the top?

6 MR. POOLE: Yes.

7 MR. ESTEY: And under the British
8 Columbia system, do you have any figures in recent years
9 of how many claims or rejections and how many appeals
10 there were?

11 MR. POOLE: Yes. I have the annual
12 report for 1965 of the Board in British Columbia. It
13 shows the volume of claims handled by the Claims
14 Department increased by 7.5% in 1965 over the previous
15 year. In all 94,632 new claims were processed in
16 addition to those re-opened or continued from previous
17 years.

18 MR. ESTEY: What are those figures?

19 MR. POOLE: 94,632 new claims
20 established, and their Review Board conducted 152 hearings
21 on new claims.

22 MR. ESTEY: Those claims established
23 are not claims made.

24 MR. POOLE: Yes, sir. We in our
25 jargon, I suppose you call it, on indicating the number
26 of cases reported to the Board, we term it incidence
27 report of injuries.

28 MR. ESTEY: Those are the gross
29 number of claims made?

30 MR. POOLE: Yes.



1 MR. ESTEY: And how many rejections?

2 MR. POOLE: Well, actually they don't
3 show how many they reject. They say that they heard 152
4 hearings.

5 MR. ESTEY: And that is before the
6 Review Board?

7 MR. POOLE: Before the Review Board.

8 MR. ESTEY: And do they allow hearings
9 in the Board itself?

10 MR. POOLE: I believe so.

11 MR. ESTEY: You have no record of
12 how many those are?

13 MR. POOLE: No, there is no indication
14 in the report.

15 MR. ESTEY: Those figures compare
16 with how many in the Ontario statistics?

17 MR. POOLE: In 1965 there were 359,353
18 claims reported.

19 MR. ESTEY: Is the word "reported"
20 the same as "established"?

21 MR. POOLE: Yes.

22 MR. ESTEY: And 15,289 rejected.

23 MR. POOLE: Yes.

24 MR. ESTEY: Of whom about one in seven
25 appealed, 2,000-odd, to the Review Board. That compares
26 with how many in British Columbia?

27 MR. POOLE: They indicated they had
28 152 hearings. Now, they may have dealt with more claims
29 than that because of the fact that these are hearings
30 they have reported.



1 MR. ESTEY: And that would compare with
2 the distinction you make above that, where you have
3 1,125 appeals but only holding 175 hearings.

4 MR. POOLE: Yes.

5 MR. ESTEY: So those British Columbia
6 statistics are not directly comparable with the Ontario
7 1965 figures.

8 MR. POOLE: No.

9 MR. ESTEY: They are not complete,
10 I take it?

11 MR. POOLE: They are not complete.

12 THE COMMISSIONER: Mr. Poole, before
13 we leave it, I am concerned about this appeal procedure.
14 There are no Board regulations setting up this procedure;
15 is that correct?

16 MR. POOLE: There are Board orders
17 setting it up in which the Board indicated that it was
18 challengeable, but there is no regulation under the
19 Act.

20 THE COMMISSIONER: I was thinking of
21 man who has the right to attempt to have his claim
22 treated in the manner you have outlined. Are there no
23 regulations in existence?

24 MR. POOLE: No regulations at all.

25 THE COMMISSIONER: No regulations?

26 MR. POOLE: Not only no regulations,
27 there is no duty on the Board to hold a hearing.

28 THE COMMISSIONER: None at all?

29 MR. POOLE: Not that I know of, sir.

30 THE COMMISSIONER: I take it that



1 the Board's view is that this privilege clause, Section
2 72, should continue and that there should be no appeal
3 from the Board to the courts.

4 MR. POOLE: Well, the Board feels
5 that there has developed administratively a pretty ample
6 appeal system and they don't feel there is any great need
7 for this.

8 THE COMMISSIONER: We have heard
9 from the Board of Trade and others that some questions
10 don't relate to compensation claims, but rather claims
11 for other people to contribute to the fund. You heard
12 Mr. O'Connor talking about that for the Board of Trade?

13 MR. POOLE: Unfortunately, I wasn't
14 here.

15 THE COMMISSIONER: Now, if an employer
16 should feel wronged by the Board's decision, of course,
17 he has nowhere to go with his complaint.

18 MR. POOLE: Of course, we feel he has,
19 the same as the employee has the right.

20 THE COMMISSIONER: If a piledriver
21 has a complaint, he can go through the same procedure.

22 MR. POOLE: The Review Board have men
23 on it who are skilled in assessment, sir.

24 THE COMMISSIONER: You must have had
25 many complaints or objections about classifications.
26 Have they gone through this process that you have
27 mentioned?

28 MR. POOLE: There are very, very few
29 have ever gone through.

30 THE COMMISSIONER: Very few complaints?



1 MR. POOLE: That is right.

2 THE COMMISSIONER: That is on
3 classification?

4 MR. POOLE: There usually is a
5 situation wherein the groups and classes are able to
6 discuss this at the level of the Department in which
7 this matter is handled, and it never to any great extent
8 goes beyond this.

9 MR. ESTEY: How does the employer
10 find out he can take these complaints to the Review
11 Board?

12 MR. POOLE: He is advised.

13 MR. ESTEY: How?

14 MR. POOLE: If it goes through the
15 group at the level of the Assessment Department, who are
16 in charge of classification, they are advised that it
17 can be appealed further.

18 MR. ESTEY: This is where the
19 employer appeals to the Board; he is told in reply,
20 "If you don't like this you can appeal"?

21 MR. POOLE: Yes.

22 MR. ESTEY: Is there any notice to
23 that effect or circulation to see how this is broadcast
24 to the employer world?

25 MR. POOLE: As a matter of fact, no.

26 MR. ESTEY: Have you ever heard an
27 employer take such an appeal?

28 MR. POOLE: Yes, there have been one
29 or two appeals to the Board.

30 MR. ESTEY: All the way up through the



1 ladders right to the Board?

2 MR. POOLE: Yes.

3 MR. ESTEY: Did you have any in the
4 last year or two?

5 MR. POOLE: Yes.

6 MR. ESTEY: Does the Board give any
7 reason? I was just wondering if you have a sample of
8 how the Board disposes of these non-compensable issues?

9 MR. POOLE: Yes.

10 MR. ESTEY: Can you give us one of
11 those?

12 MR. POOLE: Yes.

13 MR. ESTEY: What about Section 86 (6)
14 where the employer has a good record in the prevention of
15 accidents and where the Board is of such an opinion that
16 it can reduce the amount of contribution? Is that
17 appealable?

18 MR. POOLE: Yes.

19 MR. ESTEY: Does that go down through
20 the Claims Branch the same way?

21 MR. POOLE: No.

22 MR. ESTEY: Where does that one go?

23 MR. POOLE: It goes through the same
24 appeal system. It is made up of a group of people, some
25 of them with claims experience, some with assessment
26 experience, and a doctor.

27 MR. ESTEY: And with that background
28 they sit on claims of both kinds?

29 MR. POOLE: Yes.

30 MR. ESTEY: So you have a man experienced



1 in assessment sitting on appeals and a man experienced in
2 claims adjustments sitting on compensable issues?

3 MR. POOLE: Actually, yes, because it
4 is part of the system.

5 MR. ESTEY: Is there any policy or
6 directive of the Board as to the right of appeal under
7 Section 86 (6)?

8 MR. POOLE: Simply the advice as it
9 goes through the procedure; they are advised of it.

10 MR. ESTEY: And that applies to
11 Section 86 (6a) where the reverse is the case, and again
12 the employer has the right of appeal.

13 MR. POOLE: Yes.

14 MR. ESTEY: Where he is saddled with
15 the extra assessment?

16 MR. POOLE: Yes.

17 MR. ESTEY: And that also goes through
18 to the Board?

19 MR. POOLE: Yes.

20 MR. ESTEY: You have had examples
21 where this has happened?

22 MR. POOLE: Yes.

23 MR. ESTEY: In these hearings I take
24 it the appellant, of course, can appear as a representa-
25 tive because many of them are corporations.

26 MR. POOLE: They most always do, sir.

27 MR. ESTEY: There is no Crown
28 Attorney sitting there in the interests of the inanimate
29 fund?

30 MR. POOLE: That is right.



1 MR. ESTEY: Before I close, I see
2 that Mr. Justice Tysoe in his report said he looked at
3 the Ontario appeal system and said:

4 "I cannot see the necessity in
5 British Columbia of both a Board
6 of Review and an Appeal Tribunal
7 as in Ontario. My impression is
8 that the former can perform the
9 functions of both and it is my
10 intention that it should do so."

11 I take it that has been considered here and rejected.
12 Is that because of our terrific volume of cases?

13 MR. POOLE: I think Mr. Justice Tysoe
14 took the position that because of the lack of that in
15 British Columbia it wasn't a necessity.

16 THE COMMISSIONER: I am sorry, I didn't
17 hear what you said.

18 MR. POOLE: I said that as far as I
19 am aware Mr. Justice Tysoe in his opinion felt there was
20 not the volume of work to justify another level.

21 THE COMMISSIONER: It is about four
22 to one in Ontario.

23 MR. POOLE: Yes.

24 MR. ESTEY: Thank you, Mr. Poole.

25 THE COMMISSIONER: Is there not some
26 provision in his report subsequently in British Columbia
27 whereby there was a right of appeal on medical matters to
28 an independent medical group?

29 MR. POOLE: Yes, there is a provision.

30 THE COMMISSIONER: So that would



1 remove a substantial number of cases that would otherwise
2 be considered by the Review Committee, I suppose?

3 MR. POOLE: I am not too sure, to be
4 quite frank, Mr. Commissioner, just exactly how their
5 system works out, so I would hesitate to advise how they
6 do work out.

7 MR. ESTEY: I am sorry, I didn't
8 notice that you had in the material you filed today two
9 separate memoranda. I thought they were carbon copies,
10 but they are not. You have not read the second one into
11 the record, and I have asked questions on all the topics.
12 Are you content that we not burden the thing further?

13 MR. POOLE: I am quite content.

14 MR. ESTEY: Somebody said that we
15 and the Board should look into this, notify a claimant
16 in his native language, and on a quick reading I don't
17 see that you deal with that. Have you any comments to
18 make on that?

19 MR. POOLE: With the volume that the
20 Board has to deal with, this presents quite a problem.
21 We have approximately between 13,000 and 15,000 pieces of
22 mail coming through that office every day and an equal
23 number going out, and to pick out those that are
24 received and reply in a special language would be
25 administratively quite a problem. That is one of our
26 problems. I think probably, though, that it is worth---

27 THE COMMISSIONER: You send out some?
28 Certainly the Accident Prevention people do. Do you send
29 them out from the Board in any other language than in
30 English?



1 MR. POOLE: We do in French, sir.
2 Anyone who writes to us in French receives a reply in
3 French.

4 MR. ESTEY: I thought that I saw in
5 the Rehabilitation Centre notices in Italian.

6 MR..POOLE: Yes, there are.

7 MR. ESTEY: Is it much of a problem
8 to have these standard notices of appeal attached to the
9 rejection letter printed at the time?

10 MR. POOLE: Well, we could certainly
11 take it under consideration.

12 MR. ESTEY: It would seem to me
13 impossible to tell, looking at the file, whether the man
14 is Portuguese, Maltese, or whatever he might be, but you
15 apparently run into a lot of Italians and I was just
16 wondering if that suggestion has been made.

17 MR. POOLE: We have had no suggestion
18 up until today.

19 THE COMMISSIONER: Are you not going
20 to deal with this other memorandum?

21 MR. ESTEY: We have been through all
22 the topics, sir, and the witness is content that we not
23 read it into the record. I would suggest that we staple
24 them together as one memorandum and file them.

25 THE COMMISSIONER: You have been
26 through all the things that have been mentioned in this
27 memorandum today, have you?

28 MR. ESTEY: Yes, I have been through
29 all the topics that have been raised. But, of course, as
30 Mr. Guthrie points out, it is not going to be in the



1 transcript as part of the record unless the Commissioner
2 so directs. Perhaps I could give the reporter the two
3 copies and they could copy them.

4 That completes the hearings on appeal
5 procedure. The second item announced in the notice of
6 the 14th of September deals with claims adjudication,
7 including (i) Accidents "arising out of and in the course
8 of employment". (ii) Waiting period. (iii) Casual
9 labour, and (iv) Reporting of accidents. This major
10 topic is dealt with in a great number of briefs. There
11 have been arrangements made with two or three witnesses
12 who, by reason of travel arrangements and other
13 commitments, are unable to attend tomorrow, and I would
14 like to depart from the order and call on the Canadian
15 Manufacturers' Association first on this topic.

16 THE COMMISSIONER: You are just on
17 (b) (i), or are you going to do (b) (i), (ii), (iii) and
18 (iv)?

19 MR. ESTEY: I think because of the way
20 it appears in the briefs, it is easier for the witnesses
21 to deal with all four when they are up.

22 MR. OLIVER: Mr. Commissioner, my name
23 is W. H. Oliver, and I am representing the Ontario
24 Division of the C.M.A. On reading the brief I notice
25 that it doesn't necessarily follow the main subject
26 headings you have set out under claims adjudication,
27 neither do we have any comments on some items that are
28 related there, but I would, for the purpose of
29 clarification, like to read the brief in the order it
30 was presented, starting at page 4 of the C.M.A. brief.



1 We have headed this section:

2 The Act and Social Change

3 As the conditions of society change
4 during the passage of years they create new situations
5 for which adjustment is necessary. Certainly the hours
6 of work are now fewer than they were and the five-day
7 week in manufacturing is the rule rather than the
8 exception. With this has come more leisure time. Many
9 persons use this leisure to engage in satisfying physical
10 activities of great variety such as gardening, building
11 patios, summer cottages, boats and docks. In order that
12 the true purpose of The Workmen's Compensation Act may
13 be maintained it is essential that care be taken to
14 ensure that disabilities arising out of and in the
15 course of leisure time activities are not confused with
16 industrial disabilities. There are two areas where, the
17 Association submits, the Act is wrong in not recognizing
18 such conditions or because changes were made for social
19 rather than sound compensation reasons.

20 THE COMMISSIONER: What change would
21 you suggest in the Act? What would you suggest
22 specifically in this case?

23 MR. OLIVER: Sir, I think the
24 definition of "accident" --- I think this is one that
25 the Ontario Medical Association dealt with so clearly
26 yesterday.

27 THE COMMISSIONER: You would accept
28 their definition?

29 MR. OLIVER: I don't think I would go
30 quite as far as they may have suggested.



1 THE COMMISSIONER: I was looking for
2 the exact wording that he was suggesting.

3 MR. OLIVER: I think, sir, if I recall
4 correctly, Mr. Estey asked if he might suggest some
5 wording, and I believe he felt this was more in the
6 field of the law fraternity than the medical fraternity
7 and suggested he might not be able to do it. But I think he
8 suggested something like eight-hour Medicare, and so on.
9 The problem we have is the word "causal", which seems to
10 be interpreted as the word "casual".

11 THE COMMISSIONER: Dr. Barnard
12 suggested conditions "peculiar to employment", not
13 "arising out of employment".

14 MR. OLIVER: I think we would
15 subscribe to this idea, "peculiar to employment".

16 MR. ESTEY: Section 1 (1) (a), and
17 then Section 3.

18 MR. OLIVER: On the question of
19 waiting period, we feel one of these is the waiting
20 period. Such periods are a regular feature not only of
21 Workmen's Compensation but in unemployment and sickness
22 insurance schemes. The main reason for the waiting
23 period in Workmen's Compensation is that if compensation
24 were paid in every case from the date of the disability,
25 minor injuries could be made the excuse for unwarranted
26 absence at the expense of the accident fund. Another
27 reason is that, without the waiting period, the work of
28 the Board in administering compensation would be greatly
29 increased by a large number of minor claims. The cost
30 of handling these would be out of all proportion to the



1 benefits paid.

2 It is the Association's view that
3 the purpose of the Act would be more properly served if
4 the waiting time were defined as 'working days' rather
5 than 'calendar days'. An inequity now exists whereby an
6 employee can be disabled for a Thursday and Friday,
7 return to work on Monday and be entitled to compensation,
8 whereas an employee injured on a Tuesday, disabled on
9 Tuesday and Wednesday can return to work on Thursday and
10 not be entitled to compensation.

11 Definition of Accident

12
13 Another adjustment which is essential
14 concerns the definition of an accident in order to
15 establish a clearer connection between a disability
16 and the work being done. Undoubtedly the majority of
17 claims are clear-cut in that an unusual incident
18 occurred out of and in the course of employment.
19 Compensation is payable and the employer's concern in
20 this case is twofold: firstly that the employee
21 receives equitable and proper treatment and secondly
22 that the cause of the accident be corrected.

23 There are, however, many cases where
24 employers are concerned over the determination of whether
25 or not the claim is one for which there is a liability.
26 These fall into two categories:

27 (a) Knowledge that a claim is
28 being made is not available
29 until after the employee has
30 left his place of work.



1 Sometimes there is considerable
2 delay in filing a claim.

3 When a late claim is filed by an
4 employee surely it increases the possibility that the
5 condition may not have been occasioned out of and in the
6 course of employment. To accept the claim and commence
7 payment, relying on the employer to appeal if he feels
8 justice has not been served, casts that employer in an
9 unfortunate position in the sensitive area of employee
10 relations. Surely such cases call for a different
11 handling process from those in which the claim is made
12 promptly and it is crystal clear that disability arose
13 out of and in the course of employment. It is suggested
14 that the onus to establish that is an industrial
15 disability should swing more to the employee for each
16 day delay in filing a claim and less on the employer
17 to establish that the disability was non-industrial.

18 (b) It is a condition in which
19 it is difficult to determine a
20 'causal relationship' between
21 the reported disability and the
22 work situation.

23 Likewise in cases of 'causal
24 relationship' normal processing leaves much to be
25 desired. The delineation between a normal physical
26 failure and a disability caused by the work situation
27 does not lend itself to quick and easy adjudication.

28 The Association suggests that both
29 situations described in (a) and (b) above require new
30 handling methods.



1 I think those are the only points we have
2 that are pertinent.

3 MR. ESTEY: Yes, that is all I have a note
4 of.

5 THE COMMISSIONER: Have you any questions,
6 Mr. Estey?

7 MR. ESTEY: Just two, Mr. Chairman. Mr.
8 Oliver, you raised two practical problems. One is that
9 a man gets his claim in for compensation before you
10 know there has been an accident as he leaves the place
11 of employment, goes to his doctor. By the time you find
12 out under your (a) on page 6, I take it the man is
13 gone. You are saying this raises a practical difficulty?

14 MR. OLIVER: The practical difficulty of
15 trying to determine the facts of the accident.

16 MR. ESTEY: That is a difficulty --

17 THE COMMISSIONER: And if the accident
18 occurred at work at all?

19 MR. OLIVER: Yes, and if it did not occur
20 some place else.

21 MR. ESTEY: What proposal do you have to
22 resolve that difficulty. Obviously there is one easy
23 one, of course. You can say that unless the employee
24 is excused from the circumstances of the particular
25 claim that he should make the claim before he leaves
26 the premises or he loses his right, but that is very
27 drastic.

28 MR. OLIVER: Yes, I don't think we would
29 wish to go that far. What we have suggested is there
30 are two types of claim: there are those that are



1 crystal clear, the accident occurred, the man was struck
2 by something, as a result he has an injury that everyone
3 knows about and everyone sees. We are most anxious that
4 they be treated expeditiously and properly. And then
5 we have the other, the vague accident where even the
6 disability is in doubt from a layman's point of view
7 and the conditions that created it are also somewhat
8 vague. We suggest that this type of claim requires
9 more investigation and we also feel that the onus of
10 establishing that it did, in fact, happen during employ-
11 ment swings more to the employee.

12 MR. ESTEY: This is what I want to get at.
13 What proposal do you have to make? The drastic penalty
14 is unrealistic. Is there any middle ground?

15 MR. OLIVER: We think there is. First of
16 all, there should not be a delay in compensation payment
17 but we are in the position that a claim is made, we feel
18 that the Act puts the employer in the position of
19 proving that it did not happen at work. This is the
20 first presumption that is made.

21 MR. ESTEY: Let us pause on that. That is
22 what you say in your brief but, in fact, that does not
23 happen, does it? You are not asked to prove that it
24 didn't happen? Nobody asks you to do that?

25 MR. OLIVER: If we don't, the claim is
26 likely to be accepted.

27 MR. ESTEY: That is right. Secondly, do
28 your members, as a matter of significant routine, appeal
29 awards of compensation? Is that a significant thing?

30 MR. OLIVER: More so than it was. I think



1 that was suggested by Mr. Poole. We are becoming a little
2 more aware of the Appeal Procedure that is also available
3 to employers.

4 MR. ESTEY: And that is why you say the
5 onus may have shifted inadvertently here to the
6 employer because if he is to allow the claim and some-
7 body doesn't challenge it, therefore, it must be a
8 good claim. This is the habit of thinking you are
9 talking about?

10 MR. OLIVER: Yes.

11 MR. ESTEY: That is the first category and
12 I take it your Association has no proposal as to a
13 deterrent which would encourage the employee to report
14 before he leaves the premises?

15 MR. OLIVER: No. While it is more difficult
16 to establish that in fact it happened on the premises,
17 if it did we should eventually be able to clarify to
18 all concerned that it in fact did occur, but it takes
19 more time to do that than the first claim to the Claims
20 Officer and a check commences.

21 MR. ESTEY: I suppose one way to balance
22 the scale a little bit on that is to say that if the
23 man did not so report - and put it in the statute -
24 that it would be a factor in determining whether or not
25 the employee has discharged the onus of proof on him
26 that the injury occurred under circumstances entitling
27 him to compensation?

28 MR. OLIVER: That is right.

29 MR. ESTEY: Let us move backwards to the
30 waiting period. You do suggest, as you say, that you



1 should use working days instead of calendar days in the
2 definition of a waiting period and it is obvious why
3 you have said that. Now, do you think that the three-
4 day period is correct? Should it be three or four, or
5 do you have any comments on that?

6 MR. OLIVER: No, we think there needs to
7 be a waiting period and we think the waiting period
8 now is satisfactory, but it should be working days
9 rather than calendar days.

10 MR. ESTEY: We have seen in some other
11 briefs that the Board has enunciated a policy that
12 this three doesn't mean three, that really it is two.

13 MR. OLIVER: Two and a fraction thereof,
14 I believe. It is over two, I think that is the
15 philosophy.

16 MR. ESTEY: Do you have any comments on
17 that?

18 MR. OLIVER: I think it comes about in this
19 weekend period. That is the point we are trying to
20 make.

21 MR. ESTEY: As I see it, those are two
22 different problems. You are lucky if you get hurt on
23 Thursday or Friday because the waiting period carries
24 you over to your next pay day, but on the issue as to
25 whether three days means three days, do you have any
26 view as to whether it means three or two, or does
27 practicality require the Board to do what it is doing
28 and saying that three days means two and a fraction?

29 MR. OLIVER: There may be possibly a
30 practicality involved because accidents do not always



1 occur at the end of the shift or the beginning of a work
2 day.

3 MR. ESTEY: Unless you confine it to 72
4 hours, you might have difficulty in fractioning it off.

5 MR. OLIVER: That is right.

6 MR. ESTEY: Mr. Guthrie draws to my
7 attention something I have forgotten that the definition
8 in the statute says "At least three calendar days".

9 MR. OLIVER: Yes.

10 MR. ESTEY: It doesn't say at least more
11 than two?

12 MR. OLIVER: No.

13 MR. ESTEY: I am asking you whether in
14 industry it is impractical to hold that waiting period
15 to a three day span. Should it be in hours now?

16 MR. OLIVER: I don't think it is any more
17 practical to say that it is a three day span than it
18 is a two day span, but I can appreciate that if you are
19 saying it is three, at times it is going to be somewhat
20 more than two and somewhat less than three because of
21 the time element.

22 MR. ESTEY: That is true, whatever it is.
23 Sometimes it may be two and a fraction. Apparently
24 that is intended under the Act, but I just wondered if
25 you had any comments to explain why the Board, if the
26 Board has done what some people say in their briefs,
27 why the Board would find it convenient to interpret
28 that as two and a fraction?

29 MR. OLIVER: I really can't tell you why
30 they would find it convenient to determine it that way.



1 MR. ESTEY: In your view, it should be at
2 least three?

3 MR. OLIVER: In my view it should be at
4 least what the statute requires.

5 MR. ESTEY: Do you see any harm in saying
6 72 hours?

7 MR. OLIVER: I think that would again
8 involve a definition of 72 regular working hours.

9 MR. ESTEY: Thank you.

10 THE COMMISSIONER: In connection with the
11 time limit, there are certain time limits in the Act
12 now about making claims or not and the Board, I think,
13 is giving time to enlarge on those if they see fit. In
14 view of the importance that you place on the prompt
15 reporting or making of a claim, do you feel that there
16 should be any change in that discretion that is given
17 to the Board to make it more likely to be compliance
18 with the regulations?

19 MR. OLIVER: I am not aware, sir, of any
20 time limits except on employers. My understanding, as
21 I heard today, is that a claim is always open.

22 THE COMMISSIONER: There is no time limit
23 in any part of the Act. There is the time limit in
24 making claims.

25 MR. ESTEY: Section 21, I think, from
26 memory. Section 21 and also Section 115. Compensa-
27 tion is not payable unless notice of the accident is
28 given as soon as practicable after the happening of it
29 and before the workman has voluntarily left the employ-
30 ment on which he was injured unless the claim for



1 compensation medically is made within six months of
2 the happening of the accident and in the case of death
3 six months from the date of death, but I think 115 has
4 got something "Every employer within three days after
5 the happening of an accident shall notify the Board in
6 writing". You have those rules which, if enforced,
7 would contribute to the problem or solving the problem
8 that you have raised, but the problem is how you en-
9 force them.

10 THE COMMISSIONER: Perhaps any power
11 to the Board to enlarge the time might be a powerful
12 enforcing factor. It seems to me that in the Tysoe
13 report in British Columbia in considering this, they
14 were recommending that the rule be at the discretion of
15 the Board. Thank you very much, Mr. Oliver.

16 MR. ESTEY: I take it, Mr. Chairman, the
17 time has come to adjourn, rather than start a new
18 brief?

19 THE COMMISSIONER: Yes, I think we had
20 better adjourn, rather than start something more. We
21 lost a little time along the way today.

22 MR. ESTEY: We can put somebody on if you
23 like. We have an unlimited supply of submissions.

24 THE COMMISSIONER: I think in order to
25 allow counsel to get on top of the work, so much of this
26 work is in submissions, that we should try and observe
27 these hours so that counsel can be prepared properly
28 for the following day, so we will adjourn until ten
29 o'clock tomorrow morning. (At 4:35 P.M., the Hearing
30 adjourned until 10:00 A.M. on Wednesday, 28th September,
1966).

